

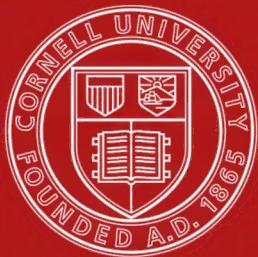
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THE  
ANNOTATED CORPORATION LAWS  
OF  
ALL THE STATES

CONTAINING  
All the Legislation of 1899 generally applicable to Stock Corporations,  
Trusts and Combinations, Receivers, Taxation, Labor, and  
Crimes by Corporations and their Officers.

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FIRST SUPPLEMENT.

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COMPILED AND EDITED BY  
ROBERT C. CUMMING, FRANK B. GILBERT AND HENRY L. WOODWARD.

VOL. IV.

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J. B. LYON COMPANY, PUBLISHERS.  
1899.

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1899.

## INTRODUCTORY NOTE.

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The plan of the Annotated Corporation Laws of all the States comprehended the publication from time to time of supplemental volumes bringing the statutes and decisions down to date. Since January 1, 1899, thirty-seven States have held legislative sessions, as indicated by the table annexed to this note; thirty-one States hold regular legislative sessions in the odd-numbered years; eight States hold regular sessions in the even-numbered years, and six States hold regular annual sessions. From this it is obvious that the legislation throughout the country in an odd-numbered year is much greater than in an even-numbered one. The legislation of 1899 seems to have been unusually important. Many laws were enacted relating to trusts and combinations, the privileges of foreign corporations to do business in the several States, and the employment of labor. Since the compilations contained in the general work were prepared, several States have enacted official editions of their statutes, involving a change in section numbering, and, frequently, a change in substance. In other States semi-official editions of the statutes have been published.

A supplemental volume of this work, therefore, seems especially desirable at this time.

This volume contains all the general corporate legislation of 1899, and all general corporation decisions down to the volume and page of the Reporter System of the West Publishing Co., as indicated at the beginning of the decisions of each State. We have also included several laws, affecting special classes of corporations, as for instance, laws imposing taxes on the franchises of transportation corporations. Just at this time such legislation is of peculiar interest in several States. We do not pretend, however, that in this respect the work is complete, the original plan being to include only corporate legislation of a general character.

We have recompiled in full the corporate laws of Georgia, Iowa, Arkansas, Kansas, Minnesota and Wisconsin. The compilations of the laws of Georgia and Iowa are based upon the latest official codes. In the other States, the compilations are based upon semi-official compilations, which the editors believe are now in more general use in such States than the statutes from which the original work was compiled, and afford a more convenient index to their laws. Unofficial editions of the statutes have also been published in several States. Although these are sometimes cited in opinions and referred to in amendatory laws, they do not differ in substance from the compilations contained in the original work. Compilations of the statutes, under direction of the legislature, are in progress in Wyoming and Nevada, but are unfinished when this volume goes to press.

The volume is arranged in the alphabetical order of the States, and the statutes and decisions are fully cross-referenced to the section in the general work, amended or construed.

Albany, November 1, 1899.



## TABLE

Indicating the years in which are held regular sessions of the  
Legislatures of the several States.

Biennial in odd-numbered years.	Biennial in even-numbered years.	Annual.
ALABAMA.		
ARKANSAS.		
CALIFORNIA.		
COLORADO.		
CONNECTICUT.		
DELAWARE.		
FLORIDA.		
IDAHO.		GEOORGIA,
ILLINOIS.		
INDIANA.		
KANSAS.	IOWA.	
MAINE.	KENTUCKY.	
MICHIGAN.	LOUISIANA.	
MINNESOTA.	MARYLAND.	MASSACHUSETTS.
MISSOURI.		
MONTANA.	MISSISSIPPI.	
NEBRASKA.		
NEVADA.		
NEW HAMPSHIRE.		
NORTH CAROLINA.		NEW JERSEY.
NORTH DAKOTA.		NEW YORK.
OREGON.	OHIO.	
PENNSYLVANIA.		
SOUTH DAKOTA.		RHODE ISLAND.
TENNESSEE.		SOUTH CAROLINA.
TEXAS.		
UTAH.	VERMONT.	
WASHINGTON.	VIRGINIA.	
WEST VIRGINIA.		
WISCONSIN.		
WYOMING.		







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ALABAMA.

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# ALABAMA.

## LAWS OF 1899.

### Act No. 136.

#### Constitutional Convention in 1899.

AN ACT to provide for holding convention to revise and amend the Constitution of this State and for the submission of the question—convention or no convention—to a vote of the electors of the State.

Section 1. Be it enacted by the General Assembly of Alabama, That on first Monday in July, 1899, an election shall be held in the several counties of this State, for the purpose of determining whether or not a convention shall be held to revise and amend the Constitution of this State, and at that election the question of convention or no convention, shall be submitted to a vote of the qualified electors of the State, and if a majority of the voters voting at said election shall approve of the holding of a convention for the purpose stated, said convention shall be held as hereinafter provided. (Laws 1899, p. 90.)

### Act No. 645.

#### Taxation of Corporate Shares.

AN ACT to amend subdivision 9 of section 3911 of the Code of 1896.

Be it enacted by the General Assembly of Alabama, That subdivision 9 of section 3911 of the Code of Alabama of 1896 be and the same is so amended as to read as follows: "Every share of any corporation organized under the laws of this State, or any other State, or of the United States (other than railroad, telegraph, express and sleeping car companies, building and loan associations and banks and banking associations) to be assessed and collected in the county wherein such corporation has its chief of\* home office in this State, and to be assessed at its market value, to the person in whose name such shares stand on the books of the corporation, and not to the corporation. It shall be the duty of the president or chief officer of every such corporation to make out and return under oath to the assessor of the county in which the chief of home office of the corporation

is located, a list showing the total number of shares of the capital stock of such corporation, and the par value thereof, and the full name and residence of each shareholder as far as known, the actual market value of such shares and the par value thereof, the date of the last sale of stock in such corporation, with the name of the seller and the purchaser and the price paid for same, the annual dividend declared on the stock of such corporation for the last three years, the value of the shares as shown by the books of the corporation and by the last report of the officers to the shareholders, the amount of surplus, and the amount of undivided profits not included in the surplus, and such president or chief officer shall at the same time return to the assessor a sworn statement of all the taxable property, real and personal, owned by such corporation, situated in the State, and all bonds that are owned by the corporation that are exempt from taxation under the laws of Alabama, and the value thereof as assessed for taxation the same year; and thereupon it shall be the duty of the assessor, after passing upon such assessments, to deduct from the aggregate amount or sum at which the whole of the shares are assessed the aggregate amount or sum at which the real and personal property of the corporation is assessed for taxation, and the value of all bonds that are exempt from taxation under the laws of Alabama, owned by such corporation, and the residue of values remaining after such deduction shall be the assessed value of the whole of such shares, and such residue, divided by the whole number of shares, shall constitute the value of each share for taxation, and the corporation shall pay for the shareholder the tax assessed against his shares, and the amount so paid for any shareholder shall be a lien on any interest which shareholders may have in any property owned by the corporation. It is the intent and meaning of this subdivision that all the property, real and personal of the corporation, except such property as is exempt from taxation by the laws of the State or of the United States, shall be assessed for taxation against the corporation as other property in this State is assessed to the owner thereof, and that the corporation shall pay the tax thereon, whether such assessment exceeds the aggregate assessed

\* So in session laws.

**Sale of franchises; wages.**

value of the shares or not; that the shares shall be assessed for taxation against the shareholders at their actual market value after deducting therefrom the assessed value of the real and personal property of the corporation, and the value of all the bonds that are exempt from taxation under the laws of Alabama owned by such corporation, and that the corporation shall pay for the shareholders respectively the tax so assessed against their shares. If the aggregate value of the shares does not exceed the aggregate value of the real and personal property of the corporation and the value of said non-taxable bonds owned by the corporation as assessed for taxation, then no tax shall be demanded or collected on the shares. It shall be no ground of objection to such assessment of shares that the same is entered on the assessment book in the name of the corporation: Provided, this act shall not permit the deduction of investments in non-payable securities, made less than six months prior to the beginning of the tax year." (Approved February 21, 1899.)

Laws of Ala., 1899, p. 46.

See Anno. Corp. L., Ala., p. 35.

**Act No. 664****Record of Cotton Weighed.**

AN ACT to require all corporations, companies or individuals operating or owning places for storing and weighing cotton in the State of Alabama, when a charge is made for such storage or turning out, to provide a well bound book, in which shall be kept, alphabetically arranged, and which shall at all reasonable times be open to the inspection of the public, a record of all baled cotton weighed by them, by whom offered for weighing, and for whom weighed, and to provide a penalty for violation thereof.

Section 1. Be it enacted by the General Assembly of Alabama, That from and after the passage of this act, it shall be the duty of all incorporations, companies or individuals operating or owning a place for storing and weighing baled cotton within the State of Alabama, when a charge is made for \*ance to it of the property and franchises of such book, in which shall be kept, alphabetically arranged, and which book shall at all reasonable times be open to the inspection of the public, a record of all baled cotton weighed by such warehousemen, corporations, companies or individuals, or their agents, by whom such cotton is offered for weighing, and for whom such cotton is weighed.

§ 2. Be it further enacted, That any corporations, companies, individuals, or their agents, operating or owning places for storing and weighing cotton, doing business in

violation of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars, nor more than five hundred dollars, for each violation thereof. (Approved February 21, 1899.)

Laws of Ala., 1899, p. 99.

**Act No. 709.****Sale of Property on Order of Court.**

AN ACT to authorize courts of this State exercising equity jurisdiction, to direct the sale of the property and franchises of quasi public corporations, and to define the rights, powers and duties of purchasers thereunder.

Section 1. Be it enacted by the General Assembly of Alabama, That all courts exercising equity jurisdiction in this State, and they are hereby authorized and empowered by decree to order the sale of the property and franchises of quasi public corporations, at the suit of a creditor or creditors, having a judgment or decree against such quasi public corporations.

§ 2. Be it further enacted, That the purchaser or purchasers, under such decree, if not a corporation authorized by the laws of this State, to purchase and hold the property of such quasi public corporation shall within thirty days after such sale and conveyance, become incorporated, as provided by the general incorporation laws of this State for the incorporation of purchasers under foreclosure sales of the property of like corporations, such purchaser or purchasers to associate with himself or themselves the requisite number of other persons to become incorporated.

§ 3. Be it further enacted, That upon the organization of such corporation and the conveyance to it of the property and franchises of such quasi public corporation, by such purchaser or purchasers, such corporation shall become, and be entitled to, and shall have, hold and enjoy, all such property rights and franchises. (Approved February 23, 1899.)

Laws of Ala., 1899, p. 98.

**Act No. 766.****Payment of Wages by Receiver.**

AN ACT to prefer the wages of all employes of corporations to every other debt or claim against such corporation, whenever a receiver is appointed.

Section 1. Be it enacted by the General Assembly of Alabama, That whenever a receiver of a corporation created or organized under the laws of this State, and doing business in this State, other than insurance and banking corporations, shall be appointed, the wages of all classes of employes, operators and laborers thereof, shall be preferred to every other debt or claim

\* So in session laws.

## ALABAMA.

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### Taxation.

against such corporation, and shall be paid by the receiver from the moneys of such corporation which shall first come into his hands.

§ 2. Be it further enacted, That this act shall take effect and be in force on and after its passage. (Approved February 23, 1899.)

Laws of Ala., 1899, p. 100.

### Act No. 800.

#### Taxation of Stocks of Goods.

AN ACT to amend subdivision four of section 3911 of the Code of Alabama, with reference to the assessment of stock of merchandise.

acts passed at this session of the General Assembly of Alabama, in conflict with this act, are hereby repealed. (Approved February 23, 1899.)

Laws of Ala., 1899, p. 48.

See Anno. Corp. L., Ala., p. 34. See also next act, which amends the same subdivision and was approved on the same day.

### Act No. 903.

#### Taxation.

AN ACT to amend the revenue laws of the State of Alabama.

Section 1. Be it enacted by the General Assembly of Alabama, That section 3911 of the Code be amended so as to make subdivision four of said section read as follows: 4. "All stocks of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, but the amount so assessed shall in no case be less than the capital actually employed in the business of the originally invoiced price of said goods, wares and merchandise, to be taken and furnished to the tax assessor as hereinafter provided, and this shall include all goods, wares and merchandise kept on plantations or elsewhere, or by railroad companies, or manufacturing companies or other associations, corporations or persons for sale or to be dealt out to laborers or employees for profit, or on account of their wages, and shall include all goods, wares and merchandise offered for sale by any person commencing business subsequently to the first day of October, of the current year, but in such case the tax shall be apportioned according to the date at which the business shall be commenced, so that if commenced after the 1st day of January, the tax shall be three-fourths of the tax for the whole year; if commenced after the 1st day of April, the tax shall be one-half of the tax for the whole year; Provided, that the assessment herein provided shall not include products raised on the farms, in the hands of the original producers. If the person, association or corporation carrying on such business shall fail to make returns of the amount of stock as provided by law, or if the assessor is not satisfied with the returns made the assessor, in order to make proper assessment, may examine the insurance effected by such person, association or incorporation upon the stock so to be assessed, if the same can be ascertained, and may also by inquiry of persons believed to have knowledge of the subject, inform himself of the probable average amount of such stock, and from such information, he may assess the same, upon the best judgment he can find."

Laws of Ala., 1899, p. 164. The remainder of the act is the regular revenue law imposing privilege taxes on many lines of business. See preceding act amending the same subdivision and approved the same day.

See Anno. Corp. L., Ala., p. 34.

### Act No. 909.

#### Exempt from Taxation.

AN ACT to exempt cotton and other agricultural products and pig iron from taxation in the hands of the producer, or in the hands of the purchaser, purchasing the same for prompt shipment.

Section 1. Be it enacted by the General Assembly of Alabama, That cotton and other

§ 2. Be it further enacted, That all laws or parts of laws, including bills pending or

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Taxation.

agricultural products and pig iron shall be exempt from taxation in the hands of the producer or the hands of a purchaser, purchasing the same for prompt shipment, and pig iron shall be exempt for twelve months after its production and thereafter in warrant yards it shall pay a tax of two dollars on each one hundred tons for each year while it remains in said yard.

§ 2. Be it further enacted, That cotton and other agricultural products and pig iron so exempted, shall not be listed on the tax assessment, as exempt.

(Approved February 23, 1899.)

Laws of Ala., 1899, p. 122.

## CODE OF ALABAMA -- 1896.

## § 4122. Privilege Taxes.

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55. All corporations doing business in this State, whether organized in this State or in another State or country, not otherwise specifically required to pay a license tax, shall pay annually the following privilege taxes: Corporations whose paid-up capital stock is under ten thousand dollars, ten dollars. Corporations whose paid up capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars, twenty-five dollars; when the paid up capital stock exceeds fifty thousand dollars and is not over one hundred thousand dollars, forty dollars; where the paid up capital stock exceeds one hundred thousand dollars, and does not exceed two hundred thousand dollars, seventy-five dollars; where the paid up capital stock exceeds two hundred thousand dollars, and does not exceed three hundred thousand dollars, one hundred and twenty-five dollars; where the paid up capital stock exceeds three hundred thousand dollars and does not exceed four hundred thousand dollars, one hundred and seventy-five dollars; where the

paid up capital stock exceeds four hundred thousand dollars and does not exceed five hundred thousand dollars, two hundred dollars; where the paid up capital stock exceeds five hundred thousand dollars and does not exceed one million dollars, three hundred dollars; where the paid up capital stock exceeds one million dollars, five hundred dollars; when application is made for the license herein provided, it shall be accompanied by the affidavit of the president or other chief officer of the corporation showing the amount of the capital stock of such corporation, but the payment of this tax in one county in the State as evidence by the license or official certificate of the judge of probate shall be sufficient; Provided, that the provisions of this subdivision shall not apply to banks and banking institutions regularly organized as such.

Section 4122 imposes upon a large number of classes of corporations, specific privilege taxes. The above subdivision is of general application and was omitted from the compilation of the laws of Alabama, contained in the general work. It is inserted here for reference.

## DECISIONS.

(Include 26 S. Rep. 696.)

**Organization.**

Services in the organization of a corporation and on procuring the sale of land to it, if untainted with fraud or illegality, constitute a valuable and lawful consideration for a contract. *Dexter v. McClellan*, 116 Ala. 37; 22 S. Rep. 461 (1897).

What is admissible on issue, whether persons who had contracted a debt in the name of a corporation, the organization of which was fraudulent and designed merely to shield the incorporators from liability as partners. *Christian & Craft Grocery Co. v. Fruitdale Lumber Co.* (Sup. Ct. Ala.), 25 S. Rep. 566 (1899).

**Ultra vires.**

The question of ultra vires will not be considered where it is not raised by the pleadings, and no objection is made to proof of the acts alleged to be ultra vires. *National Guarantee Loan & Trust Co. v. Yeatman* (Sup. Ct. Ala.), 25 S. Rep. 1003 (1899).

Where it has acquired title and possession,

a corporation's right to hold real property can, in a direct proceeding, be questioned by the State only. *South & N. A. R. Co. v. Highland Ave. & B. R. Co.* (Sup. Ct. Ala.), 24 S. Rep. 114 (1898).

A corporation, as a rule, cannot indorse for accommodation, and if the power is not conferred by its charter, it cannot be conferred by the by-laws, even when adopted by the unanimous vote of the stockholders. *Steiner v. Steiner Land & Lumber Co.* (Sup. Ct. Ala.) 26 S. Rep. 494 (1899).

**Domicile.**

A railroad corporation, incorporated both in Georgia and Alabama, has a residence in each of the States, and, when sued in either, cannot plead its residence in the other. *Georgia & A. Ry. Co. v. Stollenwerck* (Sup. Ct. Ala.), 25 S. Rep. 258 (1899).

**Officers; compensation.**

A treasurer of a corporation held not liable for the loss of corporate funds which

## Decisions.

he had deposited in a reputedly solvent bank. *Booth v. Dexter Steam Fire Engine Co. No. 1* (Sup. Ct. Ala.), 24 S. Rep. 405 (1898).

One elected secretary by the directors holds his office until his successor is elected, and cannot be removed by the president. *Mobile, J. & K. C. R. Co. v. Owen* (Sup. Ct. Ala.), 25 S. Rep. 612 (1899).

The office of secretary was created by the by-laws, which provided that the salary should be fixed by directors. An incumbent of the office agreed upon a salary with the president. His report, in which he charged himself with his salary, was approved, and he was afterwards re-elected by the board. Held, that, he was entitled to his salary for the full period. *Id.*

It is no defense to an action for such salary that he was also the secretary of another corporation, it not being shown that the duties of the latter office conflicted with the former. *Id.*

**Dealings with officers.**

The fact that a president of a corporation, with the consent of the board of directors and stockholders, purchased corporate bonds of the value of \$18,000 for \$16,500, does not render them invalid as fraudulent, as against a creditor whose claim was contracted nearly six years after. *Anderson v. Bullock Co. Bk.* (Sup. Ct. Ala.), 25 S. Rep. 523 (1899).

**Stock; subscriptions; issue for property.**

A railroad stock subscription note matured on the decision of the directors that the road was completed, publication in certain papers of such decision to be conclusive notice thereof. Held, that such decision and publication did not mature the note, unless the road was in fact completed. *Garner v. Hall* (Sup. Ct. Ala.), 25 S. Rep. 186 (1899).

In such case a demand of the president for payment, reciting that the note was due, and that the road was furnished, is a mere declaration of an agent, which would not estop the road from denying such facts, in the absence of proof of authority of the president to make them. *Id.*

A contract by a corporation to repay in dividends the amount paid by a subscriber for his stock is void under Const. art. 14, § 6, providing that no corporation shall issue stock, except for money, labor done, or money or property actually received; and all fictitious issue of stock shall be void. *Smith v. Alabama Fruit-Growing & Winery Assn.*, (Sup. Ct. Ala.), 26 S. Rep. 232 (1899).

The provisions of the Const. (art. 13, § 6), (Anno. Corp. L., Ala., p. 9, § 6), and Code 1876, § 1805 (Anno. Corp. L., Ala., p. 12, § 1142), prohibiting the issue of stock for property at a less valuation than it is reasonably worth are for the protection of creditors as well as purchasers of stock.

*Roman v. Dimmick*, 115 Ala. 233; 22 S. Rep. 109 (1897).

Where a subscription for stock is made payable in property, the property must be taken at the reasonable money value; and though a margin will be allowed for an honest difference of opinion as to its value, a valuation grossly excessive, knowingly made, while its acceptance may bind the corporation, it is a fraud on creditors, and they may proceed against the stockholders individually as for an unpaid subscription. *Id.*

**Bonds; issue.**

Where a corporation gives, as collateral security, its mortgage bonds of a face value in excess of the debt secured, there is no fictitious issue or disposition of the bonds within the prohibiton of the Const. (Art. 14, § 6 (Anno. Corp. L., Ala., p. 9)). *Dexter v. McClellan*, 116 Ala. 37; 22 S. Rep. 461 (1897).

**Corporation as stockholder.**

Whether a company was without corporate power to subscribe for the stock of another corporation is immaterial, in an action for dividends. *Bigbee & W. R. Packet Co. v. Moore* (Sup. Ct. Ala.), 25 S. Rep. 602 (1899).

**Stockholders; liability; actions by, against officers.**

A bill by a creditor to compel a stockholder to pay the difference between the value of lands conveyed to the corporation and the par value of his stock, sufficiently charges fraud where it avers that all the capital stock of \$1,250,000 was paid for by the conveyance of real estate of the value of \$100,000. *Lea v. Iron Belt Mercantile Co.* (Sup. Ct. Ala.), 24 S. Rep. 28 (1898).

The acts of 1894-1895 relating to liability of stockholders and authorizing suits against them by creditors apply to subscriptions made before the passage of the act, where it is not shown that the remedy would increase the liability of the stockholder. *Id.*

A court of equity has power, at the suit of a creditor, to compel stockholders of an insolvent corporation, to pay their subscriptions. *Pickering v. Townsend* (Sup. Ct. Ala.), 23 S. Rep. 703 (1898).

A bill by a stockholder to reach for himself individually certain corporate assets that were conveyed to another stockholder, held insufficient. *Jefferson Co. Bk. v. Francis* (Sup. Ct. Ala.), 23 S. Rep. 48 (1898).

The rule reiterated that where a stockholder brings an action against corporate officers for wrongful conversion of corporate funds or misappropriation of assets, he must first make demand on the managing officers or board to correct the grievance, unless it clearly appears that such demand would meet with refusal, or that the litigation to follow would be under the control of per-

## Decisions.

sons opposed to its success, or that the persons constituting the governing board, or a majority of them, are themselves the wrong doers. *Montgomery Light Co. v. Lahey* (Sup. Ct. Ala.), 25 S. Rep. 1006 (1899).

In such a suit by a stockholder it is not necessary that he should aver when and from whom he obtained his stock. *Id.*

**Corporate action, what constitutes.**

The act of all the stockholders individually is not the act of the corporation. A mortgage given by the two sole stockholders to secure their debt, and signed by them individually as officers of the company, is void as to the corporation. *First Nat. Bk. of Gadsden v. Winchester* (Sup. Ct. Ala.), 24 S. Rep. 351 (1898).

Such mortgage, however, gives the mortgagee rights superior to a subsequent encumbrancer of the corporation with notice. *Id.*

**Estoppel, where corporation receives benefits.**

Where defendant's agents, in the course of their duty, accepted and used plaintiff's ties, it is no defense to an action for the price, that the defendant's rules forbid the acceptance of that quality of ties. *Southern Ry. Co. v. Raney*, 117 Ala. 270; 23 S. Rep. 29 (1898).

Where a note given for the price of land conveyed to a corporation embodies a promise of the corporation to pay, and a bill to enforce vendor's lien avers that the note was executed by the corporation, the note is to be taken as the obligation of the company, though signed by an individual as officer of the corporation. *Wagner v. Brinkhoff* (Sup. Ct. Ala.), 26 S. Rep. 117 (1899).

**Estoppel from denying corporate existence.**

Where defendants contend that they contracted the debt sued on as officers of a corporation, evidence that plaintiff dealt with the company on the representation of one of the defendants that it was a copartnership is admissible to show that plaintiff, by reason of not having contracted with the company as a corporation, was not estopped to deny its corporate existence. *Christian & Craft Grocery Co. v. Fruitdale Lumber Co.* (Sup. Ct. Ala.), 25 S. Rep. 566 (1899).

Where a corporation was organized without capital to cover a real partnership, the persons constituting the company are personally liable to all who did not deal with it as a corporation, though the incorporation was regular and complete. *Id.*

The existence of a corporation may be attacked collaterally in a suit against the incorporators as individuals by a person who did not contract with the corporation as such. *Id.*

**Minutes of meeting as evidence.**

As against a member of a corporation, the minutes of a corporate meeting which he attended are admissible to show what was done at such meeting. *Booth v. Dexter Steam Fire Engine Co. No. 1* (Sup. Ct. Ala.), 24 S. Rep. 405 (1898).

**By-laws.**

The charter of a corporation, together with the general laws of the State of its creation, is the measure of its powers, and the enumeration of these powers implies the exclusion of all others, except such as are incidental or necessarily implied. Hence it is not competent for the stockholders, by the adoption of by-laws, to enlarge or extend the powers of the corporation beyond the scope authorized by its charter and the general laws. In so far as its by-laws are inconsistent with the object of the corporation, and the spirit and terms of its charter, or attempt to authorize the corporation to perform acts beyond its charter powers, they are void, although adopted with the unanimous consent of the stockholders. *Steiner v. Steiner Land & Lumber Co.* (Sup. Ct. Ala.), 26 S. Rep. 494 (1898).

A by-law of an association of steamboat owners, in which each contribute boats and are to receive dividends so long as their boats are in repair, held not to impose on the company a duty to repair boats furnished by such owners, although the by-law provided that if an owner failed to repair his boat, the company might do so, and deduct from dividends due him. *Bigbee & W. R. Packet Co. v. Moore* (Sup. Ct. Ala.), 25 S. Rep. 602 (1899).

**Creditors.**

A creditor of a corporation cannot attack a corporate mortgage given to secure a debt, because notice to the stockholders of a meeting at which the holders of the larger part in value of the stock consented to the mortgage was not given, as required by Code 1896, § 1256, subd. 7 (Anno. Corp. L., Ala., p. 19). That section is for the protection of the stockholders. *Anderson v. Bullock County Bk.* (Sup. Ct. Ala.), 25 S. Rep. 523 (1899).

Where certain persons purchased land to be conveyed to a corporation to be afterwards formed, upon an agreement that five dollars of stock should be issued for every dollar contributed to the land fund, one who has received such stock, disposed of it, and who afterwards became a creditor of the corporation is estopped from recovering from the stockholders the difference between what was actually paid on the stock and its par value. *Nicosi v. Calera Land Co.*, 115 Ala. 429; 22 S. Rep. 147 (1897).

## Decisions.

**Judgment by default.**

To authorize a judgment by default against a corporation, the record or judgment entry must recite the fact that proof was made to the court that the person on whom the process was served was at the time such an officer or agent of the defendant as by law was authorized to receive service of process on its behalf. *Southern Home Bldg. & Loan Assn. v. Gillespie* (Sup. Ct. Ala.), 25 S. Rep. 564 (1899).

**Insolvency; preferential transfers.**

Where a creditor of an insolvent corporation is also, in a less amount, its debtor, the corporation can prefer him only to the extent of the balance due. *Corey v. Wadsworth* (Sup. Ct. Ala.), 25 S. Rep. 503 (1899).

An insolvent corporation may transfer its property in payment of bona fide debts due its officers, though thereby preferring their claims to those of other creditors. *Anderson v. Bullock Co. Bk.* (Sup. Ct. Ala.), 25 S. Rep. 523 (1899); *Corey v. Wadsworth* (Sup. Ct. Ala.), 25 S. Rep. 503 (1899); and thus though an officer so preferred participated in and controlled the directors' meeting at which the transfer was authorized. *Corey v. Wadsworth*, *supra*.

**Dissolution.**

The chapter of the Code on the dissolution of business corporations (Anno. Corp. L., Ala., p. 27) consists of enactments at different sessions of the legislature, and is not to be considered as embracing one general scheme. Therefore, section 1299 (Anno. Corp. L., p. 28; Code of 1886, § 1691), providing that trustees shall settle the affairs of a dissolved corporation, unless other persons are appointed by a court of competent jurisdiction, does not prevent the appointment of a receiver of a corporation dissolved by the State. *Weatherly v. Capital City Water Co.*, 115 Ala. 156; 22 S. Rep. 140 (1897). Right to the appointment of receiver where corporation is not insolvent, denied. *Id.* Duties of statutory trustees of corporation dissolved by order of the court, in carrying out the contracts of the corporation. *Id.*

**Receivers; employes' equity for wages.**

A bill praying for a receiver, sworn to "as being true to the best of affiant's knowledge and belief" is not sufficiently verified. *Smith-Dimmick Lumber Co. v. Teague* (Sup. Ct. Ala.), 24 S. Rep. 4 (1898).

A receiver cannot be appointed without notice to the debtor. *Id.*

A simple contract creditor of an insolvent corporation, which has ceased to be a going concern, without a lien, cannot have a court of equity administer the assets for the benefit of all the creditors. *Id.*

Where fraud is relied on as a ground for the appointment, the facts relied on should

be distinctly averred—not charged as a mere conclusion. *Id.*

Effect of fact that debtor is about to remove property from the State. *Id.*

Where there are two boards of directors, each claiming to be legal, and each attacking the other by legal proceedings, and neither is in such control as to be able to take necessary steps to relieve the minority stockholders against mismanagement, equity may appoint a receiver until there is a recognized board of directors elected, though the corporation be solvent. *Jasper Land Co. v. Wallace* (Sup. Ct. Ala.), 26 S. Rep. 659 (1899).

Prior application for redress need not be made to the corporate authorities. *Id.*

The receivers of a corporation are not entitled to a summary writ of assistance to recover property of the corporation held by persons not parties to the cause, and who in good faith deny the receivers' right to the possession, claiming under a contract from the corporation. *Musgrave v. Gray* (Sup. Ct. Ala.), 26 S. Rep. 643 (1899).

A receiver appointed in a suit to foreclose a mortgage on substantially all the property of a corporation is not a proper party to enforce payment of subscriptions to stock, where his appointment does not interfere with the management and control of the unincumbered assets of the corporation. *Lea v. Iron Belt Mercantile Co.* (Sup. Ct. Ala.), 24 S. Rep. 28 (1898).

The equity of an employe to have his claim for services, performed within six months prior to the appointment of a receiver, preferred to the lien of bondholders, discussed and defined. *Pickering v. Townsend* (Sup. Ct. Ala.), 23 S. Rep. 703 (1897).

**Foreign corporations.**

A loan by a New York corporation to an Alabama corporation, and the taking of a mortgage as security executed in New York, with the bonds, to secure the loan and their coupons, also executed in New York, is a New York contract, and not within the statute providing that no foreign corporation shall do business within the State, unless it designates a place of business therein. *Electric Lighting Co. of Mobile v. Rust*, 117 Ala. 680; 23 S. Rep. 751 (1898).

Where a contract has been executed, there can be no relief granted on the ground that it originated with a foreign corporation which has not complied with the statute. *Id.*

Under Code 1890, § 1803, relieving corporation of the necessity of proving the fact of incorporation, unless denied by a verified plea, it was not error that a licensed foreign corporation introduced a copy of its charter, signed by the "deputy secretary" of the domicile State, when no such plea was interposed. *Mobile & O. R. Co. v. Postal Tel. Cable Co.* (Sup. Ct. Ala.), 24 S. Rep. 408 (1898).

## Decisions.

Under Const., art. 14, § 4 (Anno. Corp. L., Ala., p. 7), and act February 28, 1887 (Anno. Corp. L., Ala., p. 28, § 1316), prohibiting a foreign corporation from doing business within the State, without a known place of business, and an authorized agent therein, a bill in foreclosure by such corporation is insufficient which fails to state that it has such place and agent. *Sullivan v. Vernon* (Sup. Ct. Ala.), 25 S. Rep. 600 (1899).

Code 1896, § 3274 (Anno. Corp. L., Ala., p. 31), providing for service on corporations by delivering a copy of the summons and complaint to the president, or

other head thereof, secretary, cashier, station agent, or any other agent thereof, includes foreign corporations; other provisions for service on foreign corporations being cumulative. *Eagle Life Assn. v. Redden* (Sup. Ct. Ala.), 25 S. Rep. 779 (1899).

## Taxation.

Act of February 18, 1897, § 35, subd. 15, requiring corporations to pay a privilege tax upheld as constitutional. *Phoenix Carpet Co. v. State* (Sup. Ct. Ala.), 22 S. Rep. 627 (1897).







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## ARKANSAS.

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# ARKANSAS.

## CONSTITUTION OF ARKANSAS—1874.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE II.

##### Declaration of Rights.

Sec. 17. Laws impairing the obligation of contracts prohibited.  
22. Private property not to be taken without just compensation.

#### ARTICLE V.

##### Legislative.

Sec. 38. No liability or obligation of any corporation shall be released by the State.

#### ARTICLE XII.

##### Private Corporations.

Sec. 1. Existing charters under which organization shall not have taken place to have no validity.  
2. No special act conferring corporate powers to be passed.  
5. No county, town or municipality shall become a stockholder.  
6. Corporations may be formed under general laws, which may be altered or repealed.  
7. State not to become a stockholder.  
8. No stock or bonds to be issued except for money, property or labor done. Fictitious increase of stock or indebtedness is void.  
9. Right of way not to be appropriated until compensation is made.  
10. Bills and notes not to circulate as money.  
11. Foreign corporations may do business in this State. Proviso.  
12. State shall never assume liability of a corporation, nor shall indebtedness to State be released.

#### ARTICLE XVI.

##### Taxation.

Sec. 7. Power to tax corporations not to be surrendered or suspended.

#### ARTICLE II.

##### Declaration of Rights.

§ 17. No \* \* \* law impairing the obligation of contracts shall ever be passed; \* \* \*

See Const., art. XII, § 6; art. XVI, § 7; Statutes, §§ 1358, 1429.

§ 22. \* \* \* Private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.

See Const., art. XII, § 9.

[Above provision is necessarily implied in the preamble to the Constitution, and in several other articles. *Ex parte Martin*, 13 Ark. 198. Until just indemnity is afforded to a party, his property cannot be taken. *Id.*; see *Roberts v. Williams*, 15 Ark. 43. Right of way acquired under charter of a corporation cannot be affected by subsequent constitutional provision. *R. R. Co. v. Turner*, 31 Ark. 495.]

#### ARTICLE V.

##### Legislative.

§ 33. No obligation or liability of any railroad or other corporation held or owned by this State shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the general assembly; nor shall such liability or obligation be released except by payment thereof into the State treasury.

See Const., art. XII, § 12.

#### ARTICLE XII.

##### Private Corporations.

§ 1. All existing charters or grants of special or exclusive privileges under which a bona fide organization shall not have taken place and business been commenced in good faith at the time of the adoption of this Constitution shall thereafter have no validity.

§ 2. The general assembly shall pass no special act conferring corporate powers, except for charitable, educational, penal or reformatory purposes, where the corporations created are to be and remain under the patronage and control of the State.

General Laws, §§ 1326-1358.

[Applied in *Little Rock v. Parish*, 36 Ark. 175. The legislature is the judge of the necessity of special legislation. *Powell v. Durden*, 61 Ark. 21.]

§ 5. No county, city, town or other municipal corporation shall become a stockholder in any company, association or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.

See § 7, post.

## Formation; stock; foreign corporations; taxation — Const., arts. 12, 16.

§ 6. Corporations may be formed under general laws, which laws may, from time to time, be altered or repealed. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators.

General Law, §§ 1326-1358.

§ 7. Except as herein provided, the State shall never become a stockholder in, or subscribe to, or be interested in, the stock of any corporation or association.

See § 5, ante.

§ 8. No private corporation shall issue stocks or bonds, except for money or property actually received or labor done, and all fictitious increase of stock or indebtedness shall be void; nor shall the stock or bonded indebtedness of any private corporation be increased, except in pursuance of general laws, nor until the consent of the persons holding the larger amount in value of stock shall be obtained at a meeting held after notice given for a period not less than sixty days, in pursuance of law.

§ 9. No property, nor right of way, shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner, in money, or first secured to him by a deposit of money, which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained by a jury of twelve men, in a court of competent jurisdiction, as shall be prescribed by law.

See Const., art. II, § 22, and note.

[Property cannot be taken under this section for private purposes. Roberts v. Williams, 15 Ark. 43. Provision has no application to a charter previously granted, in so far as it undertakes to change the mode of acquisition of property contained in such charter. C. & F. R. Co. v. Trout, 32 Ark. 18; Same v. Turner, 31 id. 494. For full discussion of power to take private property for public use, see Ex parte Martin, 13 Ark. 198. Right of way acquired under charter of a corporation cannot be affected by subsequent constitutional amendment. R. R. Co. v. Turner, 31 Ark. 495. The owner's damages for the right of way to a railroad over his land cannot be diminished by estimated benefit likely to accrue to his remaining property. R. R. v. Anderson, 39 Ark. 167.]

§ 10. No act of the general assembly shall be passed authorizing the issue of bills, notes or other paper which may circulate as money.

§ 11. Foreign corporations may be authorized to do business in this State under such limitations and restrictions as may be prescribed by law. Provided, That no such

corporation shall do any business in this State except while it maintains therein one or more known places of business and an authorized agent or agents in the same upon whom process may be served; and, as to contracts made or business done in this State, they shall be subject to the same regulations, limitations and liabilities as like corporations of this State, and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this State, nor shall they have power to condemn or appropriate private property.

See Statutes, §§ 1323-1325, 5672. "Foreign corporations" defined. § 7214.

[A corporation of another State is not a "person beyond the limits of this State" within meaning of § 13, ch. 91, R. S., concerning limitations, but is a "person residing beyond the limits of this State," within the meaning of § 14, ch. 99. Clarke v. Bank, 10 Ark. 516.

Statute of limitations as applied to foreign corporations. Bank v. Armstrong, 12 Ark. 602.

Existence of foreign corporations is a question of fact for jury. Lindauer v. Ins. Co., 13 Ark. 461. Proof of organization of foreign corporation. Lindauer v. Ins. Co., 13 Ark. 461; Finley v. Council, etc., 10 id. 425.

When foreign corporation may collect rent of land in State. Lumber Co. v. S. W. Imp. Co., 55 Ark. 625; s. c., 18 S. W. Rep. 1055.

Right of foreign corporation to do business in State. Gunn v. Sewing Machine Co., 57 Ark. 24; s. c., 20 S. W. Rep. 591.

In a suit by a foreign corporation, the plea puts in issue its existence. Plankroad Co. v. Banese & Brown, 21 Ark. 306; and Same v. Rieves et al., id. 302. See, also, 12 id. 772, and 10 id. 423. Railway corporation may litigate in this State. Railway v. Fire Assn., 55 Ark. 163; s. c., 18 S. W. Rep. 43. Presumption that foreign corporation has complied with the law. Id.

Foreign loan corporation not doing business in State, when. Scruggs v. Mortgage Co., 54 Ark. 566; s. c., 16 S. W. Rep. 563.

Above section is not self-executing. Sherwood v. Wilkins, 65 Ark. 312; 45 S. W. Rep. 988.]

§ 12. Except as herein otherwise provided, the State shall never assume or pay the debt or liability of any county, town, city or other corporation whatever, or any part thereof, unless such debt or liability shall have been created to repel invasion, suppress insurrection or to provide for the public welfare and defense. Nor shall the indebtedness of any corporation to the State ever be released or in any manner discharged save by payment into the public treasury.

See Const., art. V, § 33.

## ARTICLE XVI.

## Taxation.

§ 7. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State may be a party.

See §§ 6429, 6462, 6463.

# ARKANSAS.

Administration; attachments; costs — Stats., §§ 110, 325, 781.

## STATUTES OF ARKANSAS — 1894.

(Sandels & Hill.)

### **CHAPTER I.** **Administration.**

**Sec. 116.** Verification by corporation of demands against estates.  
**117.** Sufficiency of affidavit by officer of a corporation.

§ 116. In case of a debt due a corporation, the cashier or treasurer shall make the affidavit required in the preceding section.\* (Rev. Stat., ch. 4, § 88.)

Verification of pleadings by corporation. § 5745.

§ 117. When an affidavit shall be required to be made by an officer of a corporation, \* \* \* it shall be sufficient to state in such affidavit "that he has made diligent inquiry and examination, and that he does verily believe that nothing has been paid, except the amount credited, and that the sum demanded is justly due." (Id., § 89.)

[An affidavit by an officer of a corporation in a form prescribed by statute, omitting the words "that the sum demanded is justly due," is sufficient. State v. Collins, 16 Ark. 32.]

### **CHAPTER IX.**

#### **Attachments.**

**Sec. 325.** When and for what causes obtained.  
**336.** By whom and how executed.  
**337.** Number of shares of defendant in incorporated companies furnished sheriff on pain of contempt.

§ 325. The plaintiff in a civil action may, at or after the commencement thereof, have an attachment against the property of the defendant, in the cases and upon the grounds hereinafter stated, as a security for the satisfaction of such judgment as may be recovered:

First. In an action for the recovery of money, where the action is against —

1. A defendant or several defendants who, or some one of whom, is a foreign corporation or a non-resident of the State.

S. \* \* \* An attachment shall not be granted on the ground that the defendant or defendants, or any of them, is a foreign corporation or non-resident of this State for any claim other than a debt or demand arising upon contract. (Civil Code, § 216.)

See § 5694.

\*Affidavit to claim against an estate.

[In proceedings by attachment against property of non-resident, the statute must be strictly followed. Bush v. Visant, 40 Ark. 124.]

§ 336. The order of attachment shall be executed by the sheriff or other officer without delay, in the following manner:

Third. Upon other personal property† by delivering a copy of the order, with a notice specifying the property attached, to the person holding the same; \* \* \* as to stock in a corporation, or property held, or a debt or demand owing by it, to the chief officer, or to the secretary, cashier, treasurer or managing agent thereof, and by summoning the person or corporation to answer as a garnishee in the action. The sheriff shall deliver copies to and summon such persons as garnishees as the plaintiff may direct. (Civil Code, § 227.)

See Statutes, §§ 3057-3059.

§ 337. It shall be the duty of every person mentioned in the third subdivision of the last section, to whom the sheriff shall apply therefor, to furnish him with a certificate of the number of shares of the defendant in the stock of the corporation, a description of the property held by such corporation or person belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such corporation or person, whether due or not; and a failure to perform this duty may be punished by the court as a contempt. (Civil Code, § 337.)

### **CHAPTER XXXI.**

#### **Costs.**

**Sec. 781.** Security for costs, who to give.

§ 781. A plaintiff who is a non-resident of this State, or a corporation other than a bank created by the laws of this State, before commencing an action shall file in the clerk's office a bond, with sufficient surety, to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the courts. (Civil Code, § 698.)

† Other than that capable of manual delivery.

Foreign corporations, etc.—Stats., §§ 1322–1325, 1326.

## CHAPTER XLVII.

### Corporations.

- I. Foreign corporations.
- II. Corporations for manufacturing and other lawful business.
- VIII. Insolvent corporations.
- IX. Dissolution of corporations.

#### I. FOREIGN CORPORATIONS.

Sec. 1322. Constitutional provision.

- 1323. Foreign corporation to file certificate with secretary of State, naming agent upon whom summons may be served.
- 1324. Contracts void upon failure to comply.
- 1325. Corporations heretofore engaged in business to have ninety days to file certificate.

§ 1322 is article XII, section 11 of Constitution, ante, which see.

§ 1323. Before any foreign corporation shall begin to carry on business in this State, it shall, by its president and seal of said company filed in the office of the secretary of State, designate an agent who shall be a citizen of this State, upon whom service of summons and other process may be made. Such certificate shall state the principal place of business of said corporation in this State, and service upon such agent at any place in this State shall be sufficient service to give jurisdiction over such corporation to any of the courts of this State, whether the service was had upon said agent within the county where the suit is brought or is pending or not. (Act April 4, 1887, § 1, as am. by Act 1899, Mch. 18.)

§ 1324. If any such foreign corporation shall fail to comply with the provisions of the foregoing section, all its contracts with citizens of this State shall be void as to the corporation, and no court of this State shall enforce the same in favor of the corporation. (Id., § 2.)

§ 1325. Corporations doing business in this State at the time of the passage of this act were given ninety days to comply with section 1323, in order to avoid the penalty of section 1324. (Id., § 3.)

The above sections 1323–1325 are superseded by Act of 1899, February 16th, as amended by Act of May 8, 1899. See p. 23.

See Const., art. XII, § 11, and note; Statutes, §§ 5672, 1334, 7214.

[Above act does not affect prior contracts of foreign corporations. Railway v. Fire Assn., 55 Ark. 163; s. c., 18 S. W. Rep. 43. Does it apply to foreign insurance companies? Id.]

A trust deed made in Louisiana, providing that it should be construed by the laws of Arkansas, was not a doing of business in Arkansas within the statute imposing conditions on foreign corporations. B. & A. Mortg. Co. v. Winchell, 34 S. W. Rep. 891.

That a foreign corporation has not complied with the statutory requirements does not render

a contract of the corporation with a non-resident void. Boyington v. Van Etten, 62 Ark. 63; 35 S. W. Rep. 622.

A contract by a foreign corporation before the passage of the act of 1887 is not invalidated by its failure to comply with the act within the time prescribed, where at the time of making such contract such corporation had complied with the constitutional and statutory provisions then in force, and where the certificate filed by the company under the prior provisions was a full compliance with the later act, except as to the manner of executing it. Sidway v. Harris, Sup. Ct. Ark., 50 S. W. Rep. 1002 (1899). Non-compliance of a foreign corporation with the above statute is not shown by the production of a defective certificate of the appointment of an agent without proof that it is the only certificate in existence, since the presumption is that the statute was complied with. Id.

#### II. CORPORATIONS FOR MANUFACTURING AND OTHER LAWFUL BUSINESS.

Sec. 1326. Corporation to carry on any lawful business, who may form.

- 1327. Capital stock, amount of shares.
- 1328. Purposes of corporation to be stated.
- 1329. First meeting of stockholders.
- 1330. Board of directors, when elected; term.
- 1331. Failure to elect not to dissolve corporation.
- 1332. Officers, how elected; to reside and keep offices, where.
- 1333. Vacancy, how filled.
- 1334. To file copy of articles of association, where; what to state; copy evidence, when.
- 1335. Quorum, what.
- 1336. Calls on stock, by whom made; how collected.
- 1337. Annual report, what to contain; where filed.
- 1338. Transfers of stock.
- 1339. General corporate powers.
- 1341. Books open to inspection, where kept.
- 1342. Stock, how transferred; lien on.
- 1343. Articles of association amended, how.
- 1344. To be recorded.
- 1346. Certificates required to be under oath.
- 1347. President and secretary liable, when and for what.
- 1348. Stockholders liable, when.
- 1349. Directors liable, when.
- 1350. Officers generally liable, when.
- 1351, 1352. Insolvent; directors liable, when.
- 1353–1355. Lien on stock, foreclosed how.
- 1356. Other liens not to be affected by.
- 1357. May remove place of business, how.
- 1358. Power of legislature over.

§ 1326. Any number of persons, not less than three, who, by articles of agreement in writing, have associated, or shall associate, according to the provisions of this act, under any name assumed by them, for the purpose of engaging in or carrying on any kind of manufacturing, mechanical, mining or other lawful business, and who shall comply with all the provisions of this act, shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them in their articles of association. (Act April 12, 1869, § 1.)

See Const., art. XII, §§ 2, 6.

[Classification of corporations into public and private. State et al. v. Curran, 12 Ark. 321.

## Stock; meetings; directors, etc.—Stats., §§ 1327–1334.

**Quasi corporation distinguished from corporation.** Carson v. St. Frances Levee District, 59 Ark. 513; s. c., 27 S. W. Rep. 590.

Acts done by or to a corporation, by a name substantially its true name, though differing from it in words and syllables, are valid. Bower et al. v. Bank, 5 Ark. 234.

Proof of organization as required by the charter, and exercise of corporate powers, is *prima facie* evidence that the conditions precedent to corporate existence had been complied with. Plank-road Co. v. Rileys, 23 Ark. 302; Hammett v. R. R. Co., 20 id. 204. Corporate existence proved by general reputation. Fleener v. State, 58 Ark. 98; s. c., 23 S. W. Rep. 1. Maker of note held by bona fide indorsee cannot question corporate existence of payee. Reynolds v. Roth, 61 Ark. 317.]

**§ 1327.** The amount of capital stock in every joint-stock corporation shall be fixed and limited by the stockholders in their articles of association, and shall be divided into shares of twenty-five dollars each; but every such corporation may increase its capital stock, and the number and amount of shares therein, at any meeting of the stockholders specially warned for that purpose. (Id., § 2.)

Shares, how levied on. §§ 3056-3057. How sold on execution. § 3058. Execution against, how executed. §§ 3135-3142. Shares listed for taxation. §§ 6462-6463. Transfer of stock, how made. § 1342. Lien on stock. §§ 1353-1355. Act authorizing corporation to reduce its capital stock. See p. 20.

**§ 1328.** The purpose for which every such corporation shall be established shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds for any other purpose. (Id., § 3.)

Powers of corporations. §§ 1339-1340, and notes. Fees for filing articles. § 3299.

**§ 1329.** When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the corporation, at such time and place as they may appoint, by giving notice thereof in any one or more newspapers published in the county in which such corporation is to be established, or in any adjoining county, at least fifteen days before the time appointed for such meeting. But said notice may be waived by a writing, signed by all the subscribers to the capital stock of such company, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of such corporation, which has been held pursuant to such written waiver of notice, shall be valid. (Id., § 4.)

**§ 1330.** The stock, property, affairs and business of every such corporation shall be under the care of, and shall be managed by,

not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead. (Id., § 5.)

Directors individually liable, when. §§ 1349-1351.

[Purchase of assets of corporation by a director not void but voidable. Jones et al. v. Ark. M. & A. Co., 38 Ark. 17.]

Majority of directors cannot act where others had no notice; hence cannot make assignment of property. Simon v. Levee Assn., 54 Ark. 58; s. c., 14 S. W. Rep. 1101. Nor mortgage property. Bank v. McCarthy, 55 Ark. 473; s. c., 18 S. W. Rep. 759. How notice should be given. Id.]

**§ 1331.** If an election of directors in any such corporation shall not take place at the annual meeting thereof in any year, such corporation shall not thereby be dissolved, but an election may be had at any time within one year, to be fixed upon, and notice thereof to be given by the directors. (Id., § 6.)

**§ 1332.** The directors of every such corporation shall choose one of their number to be president, and shall also choose a secretary and treasurer, which two last-mentioned officers shall reside and have their place of business and keep the books of said corporation within this State, and shall choose such other officers as the by-laws of the corporation shall prescribe; all of which said officers shall hold their offices until others shall be chosen in their stead. (Id., § 7.)

President and secretary personally liable, when. § 1347. Officers generally, when. § 1350.

**§ 1333.** The directors of such corporation, for the time being, shall have power to fill any vacancy which may happen in their board by death, resignation or otherwise for the current year. (Id., § 8.)

**§ 1334.** Before any corporation, formed and established by virtue of the provisions of this act, shall commence business, the president and directors thereof shall file a true copy of their articles of association, at full length, and also a certificate setting forth the purpose for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, with the secretary of State, and a duplicate thereof with the clerk of the county in which such corporation is to transact business. Said articles of association and certificate shall be signed by the president and a majority of the directors; and said secretary and county clerk shall respectively record the same in books to be kept by

## Directors; stock; reports; powers — Stats., §§ 1335-1339.

them for that purpose, and, within thirty days after the payment of any installment called for by the directors of such corporation, a certificate thereof shall be made, signed, filed and recorded as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this State, under the seal thereof, shall be received in all courts as *prima facie* evidence of the due formation, existence and capacity of such corporation in any suit brought by or against the same. (Id., § 9.)

Requirements of foreign corporations. Statutes, §§ 1322-1325. Articles may be amended. §§ 1343-1346.

[Court bound to take judicial notice of act creating corporation, and of powers therein defined. Finley v. Council, 10 Ark. 423.]

Individuals cannot do business as a corporation until their articles of association are filed. For purchases made by them before that time they are personally liable as partners. Garnett et al. v. Richardson et al., 35 Ark. 144; see Connor v. Abbott, id. 365.

When an act of incorporation requires nothing to be done by the trustees named in it, as a condition precedent to their becoming a corporation, they become such immediately upon its passage. Blackwell v. State, 36 Ark. 178; *vide* 20 Ark. 204.]

§ 1335. A majority of the directors of every such corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business, and a majority of the stockholders present at any legal meeting shall be capable of transacting the business of that meeting; and at all meetings of such stockholders each share shall entitle the holder thereof to one vote. (Id., § 10.)

[By the common law a majority of the trustees of a corporation is necessary to constitute a quorum. Blackwell v. State, 36 Ark. 178.]

§ 1336. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder, in any proper action for that purpose, or may sell said stock at public auction, giving at least thirty days' notice of the time and place of sale by advertising in some newspaper published in the county where the business of such corporation is transacted, or in an adjoining county. And, in case of a sale, the proceeds thereof shall be first applied in payment of the installment called for, and the expenses of the sale and the residue shall be refunded to the owner thereof. In case the proceeds of such sale shall be insufficient to pay said installments, said corporation may

recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased. (Id., § 11.)

[Suits by corporations for calls upon subscriptions and for assessments. R. R. Co. v. Gaster, 20 Ark. 455; Same v. Chestnut, id. 461.]

Stock subscriptions. What sufficient to bind subscriber. Woodruff v. McDonald et al., 33 Ark. 97.

When subscription due before all of capital stock subscribed. Arkadelphia, etc., v. Trimble, 54 Ark. 316; s. c., 15 S. W. Rep. 776.

Voluntary release of stock subscription by insolvent company is fraud, when. Carter v. Printing Co., 54 Ark. 576; s. c., 16 S. W. Rep. 579.]

§ 1337. The president and secretary of every corporation organized under the provisions of this act shall annually make a certificate showing the condition of the affairs of such corporation, as nearly as the same can be ascertained, on the first day of January or July next preceding the time of making such certificate, in the following particulars, viz.: The amount of capital actually paid in; the cash value of its real estate; the cash value of its personal estate; the cash value of its credits; the amount of its debts; the name and number of shares of each stockholder; which certificate shall be deposited on or before the fifteenth day of February or of August with the county clerk of the county in which said corporation transacts its business, who shall record the same at length in a book to be kept by him for that purpose. (Id., § 12.)

Sale of shares under execution or attachment. Statutes, §§ 1425-1428.

§ 1338. Whenever any stockholder shall transfer his stock in any such corporation, a certificate of such transfer shall forthwith be deposited with the county clerk aforesaid, who shall note the time of said deposit and record it at full length in a book to be kept by him for that purpose; and no transfer of stock shall be valid as against any creditor of such stockholder until such certificate shall have been so deposited. (Id., § 12.)

§ 1339. All corporations organized and established under the provisions of this chapter shall be capable to sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute to final judgment in any court or elsewhere; to have a common seal and to alter the same at pleasure; to elect, in such manner as they shall determine, all necessary officers; to fix their compensations and define their duties; to ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and to employ all such agents, mechanics and other laborers as they shall think proper. (Id., § 13.)

## General powers; books; transfers; amendments — Stats., §§ 1340-1343.

**Attachments.** § 325. Executions against corporation. §§ 3056-3096. Injunction against corporation. § 3785. Pleadings and practice. §§ 5669-5894. Requirements of foreign corporation before it can sue in this State. Statutes, §§ 1323-1325. See also legislative acts, post, Act 4. Officers, how elected, etc. § 1332. Personal liability of officers. §§ 1347, 1349, 1350. Power to hold land, § 1340.

[Powers of corporation defined. Conway et al., *ex parte*, 4 Ark. 302. Corporation distinct from directors or corporators who compose it. Id. Plea of limitation to action by corporation admits its existence and capacity to sue. Clark v. Bank, 10 Ark. 516. These also admitted by plea of the general issue in suit brought by a corporation. Finley v. Council, 10 Ark. 423. Actions against corporation to recover for services rendered to promoters. R. R. Co. v. Perry, 37 Ark. 164. Oral promise by new corporation to pay debts contracted by promoters, void by statute of frauds. Id. Corporation is bound only by its own contracts, and not by those of individual members in their private capacity. Id. A plea of nul tiel corporation bad on demuror or on motion to strike out, in suit brought by a domestic corporation, created by public law, of which the courts take judicial notice; but if the statute creating the corporation require something to be performed as a condition precedent to its existence, the plea would be good, and the plaintiff must reply a performance. Hammatt v. R. R. Co., 20 Ark. 204.

In a suit by a corporation, it can be shown in defense, that the plaintiffs have forfeited their corporate rights by misuser or nonuser. Id. Private corporation may be sued by one of its own members, either at law or in equity. Booker, *ex parte*, 18 Ark. 338.

In a suit by a corporation unnecessary to aver in declaration that plaintiff is an incorporation duly constituted and authorized to sue in its corporate name. If legal existence is questioned it must be done by plea. R. R. Co. v. Gaster, 20 Ark. 455.

An answer to an action by a corporation, that it had forfeited its charter by nonuser, without averring that a forfeiture had been declared by judicial proceedings for that purpose, is demarable. West et al. v. Ins. Co., 31 Ark. 476.

In suits against corporations, it is not necessary to allege in the complaint the incorporation further than by a statement of the corporate name. Building Assn. v. Hogan, 28 Ark. 261.

Corporation may be sued for libel. Am. Cas. Co. v. Lea, 56 Ark. 539; s. c., 20 S. W. Rep. 416.

Foreign insurance company doing business in State is suable on any cause of action arising here. Id.

Foreign corporation may litigate in this State. Railway v. Fire Assn., 55 Ark. 163; s. c., 18 S. W. Rep. 43.

Authority of certain officers of a corporation to execute its notes cannot be presumed from fact that they have exercised it. Ry. Co. v. Bank, 34 S. W. Rep. 89.

Everything done by and to the persons intrusted with the management of the business at the branches of the bank of the State, in respect to that business, must be considered as done by or to the corporation. Bower v. State Bank, 5 Ark. 234.

Corporations must be limited by their charters as to questions which relate to the power of dealing with third persons; but in questions relating to their own organization a liberal construction is to be adopted. Plankroad Co. v. Rieves, 23 Ark. 302.

To bind a corporation by specialty, corporate seal must be affixed to the instrument. Private seal of agent not sufficient. State v. Allis, 18 Ark. 269.]

§ 1340. Every such corporation shall, by its corporate name, have power to acquire

and hold such lands, tenements and hereditaments and such property of every kind as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of or as security for debts due to such corporation, and to manage and dispose of the same at pleasure. (Id., § 14.)

[The assets of an incorporated company are a trust fund for the payment of its debts and may be followed into the hands of any person acquiring them with notice of the trust. Jones et al. v. Ark. M. & A. Co., 38 Ark. 17.

Conveyances of corporate property by president and secretary cannot be attacked by corporate creditors for failure of directors to agree to its sale at a corporate meeting. Estes v. Bank, 34 S. W. Rep. 85.]

§ 1341. The books of every such corporation containing their accounts shall be kept and shall at all reasonable times be open in the county where such corporation is located, or at the office of the treasurer within this State, for the inspection of any of the stockholders of said corporation; and said stockholders shall have access to the books and statements of said corporation; and shall have the right to examine the same in said county or at said office, and, as often as once in each year, a true statement of the accounts of said corporation shall be made and exhibited to the stockholders, by order of the directors. (Id., § 15.)

§ 1342. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein for all debts due from them to such corporation. (Id., § 16.)

See § 1327.

[Transfer of stock and franchise will not carry assets previously distributed among stockholders. Jefferson v. Edrington, 53 Ark. 566; s. c., 14 S. W. Rep. 99, 903.

The manner of ascertaining the value of stock in a corporation is to show its market value at the time it should have been delivered, with interest, or, if it had no market value then, to show the value of the property of the concern as compared with the liabilities, at that time, the burden being on the seller to show the stock was worth its face value. Beatty v. Johnston, Sup. Ct. Ark., 52 S. W. Rep. 129 (1899).]

§ 1343. Every such corporation may amend its articles of association by the specification of any other lawful business in which the stockholders may desire to engage; but before it shall commence any business under its amended articles other than such as was distinctly and definitely specified in its original articles, the president and directors shall cause such of the amended articles as specify the purpose for which such corporation is formed, subscribed by all the stockholders, to be published in a newspaper printed in the county in

## Increase of stock; illegal transfers; dividends, etc.—Stats., §§ 1344-1353.

which such corporation is located, or in an adjoining county; and shall also make a certificate of the purpose for which such corporation is formed, as changed by the amended articles, which certificate shall be signed, deposited and recorded in the same manner as the certificate required in section 1334. (Id., § 17.)

See § 1334.

§ 1344. When any such corporation shall increase its capital stock, as provided in section 1327, the president and directors shall, within thirty days thereafter, make a certificate thereof, which shall be signed, deposited and recorded as provided in section 1334. (Id., § 18.)

§ 1345. The county clerk, after recording the certificates specified in section 1337, shall return the same, with his indorsement of record thereon, to said corporation on demand; and for recording the certificates required in this act he shall be entitled to receive at the rate of ten cents for each one hundred words. (Id., § 19.)

§ 1346. The certificates required by sections 1334, 1337, 1343 and 1344, except certificates of transfers of stock, shall be made under oath or affirmation by the person subscribing the same; and if any person shall knowingly swear or affirm falsely as to any material facts, he shall be deemed guilty of perjury, and be punished accordingly. (Id., § 20.)

§ 1347. (As amended February 14, 1891.) If the president or secretary of any such corporation shall neglect or refuse to comply with the provisions of section 1337 and to perform the duties required of them respectively, the persons so neglecting or refusing shall jointly and severally be liable to an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal. (Id., § 21.)

**Liability of directors.** § 1349. Of other officers. § 1350. Criminal liability of officers. §§ 1877, 1879.

§ 1348. If the capital stock of any such corporation shall be withdrawn and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively, as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right, by bill in equity, to call upon all the stockholders to whom any part of said stock has been refunded to contribute their proportional part of the sum paid by him as aforesaid. (Id., § 22.)

[Liability of stockholders under the common law. Jones et al. v. Jarman, 34 Ark. 323. Liability under Constitution of 1868. Id.]

§ 1349. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be jointly and severally liable, in an action founded on this statute, for all debts due from such corporation at the time of such dividend. (Id., § 23.)

[Corporation estopped to deny that dividend has been declared, when. Ry. Co. v. Martin, 57 Ark. 355; s. c., 21 S. W. Rep. 465.

When assets of business corporation a trust fund for creditors. Worthen v. Griffith, 59 Ark. 562; s. c., 28 S. W. Rep. 286.

Right of corporation to make preferences. Id. Corporation may prefer its directors. Id.]

§ 1350. If the president, directors or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them, respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all the debts of such corporation contracted during the period of any such neglect or refusal. (Id., § 24.)

See § 1347.

[That defendant signed a note for money loaned the corporation of which he was a director in the belief that he would not be individually liable is no defense. Maledon v. Leflore, 62 Ark. 387; 35 S. W. Rep. 1102.]

§ 1351. If any corporation, organized and established under the authority of this act, shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid. (Id., § 25.)

§ 1352. Any corporation, organized under this act, which has a lien upon the stock of any stockholder therein, as provided by section 1342, may give notice to such stockholder that, unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation; and, upon default of payment, said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe, by its by-laws, the manner of giving the notice required by this section. (Id., § 26.)

§ 1353. Such corporation may, at any time within six months after it shall have given

## Liability of stockholders; insolvency, etc.—Stats., §§ 1353–1358, 1425.

the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months' notice shall have expired, advertise in one or more newspapers published in the county where such corporation is located, and if there be no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place of sale, and at the time and place shall state the amount due from such stockholder to such corporation; and may then proceed to sell, for cash, at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary cost of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose. (Id., § 27.)

§ 1354. Whenever the purchasers of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchasers, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholder, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights and interests of a stockholder in such corporation. (Id., § 28.)

§ 1355. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock, as security for his indebtedness, to a third party, and afterward shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding a transfer or assignment of such stock to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock, or any part thereof, and such corporation may sell the same as herein provided. (Id., § 29.)

§ 1356. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation. (Id., § 30.)

§ 1357. Any joint-stock corporation, organized under the provisions of this act, may remove its place of business from any

county in this State where it is or may be located to any other county in this State. But the president and secretary of such corporation shall procure from the county clerk of the county from which it shall remove a certified copy of the records of its articles of association and all other records showing the state of its affairs, to which certified copy shall be attached the certificate of said president and secretary that such corporation has thus removed, which certified copy and certificate attached shall be left for record, immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and shall be recorded by such clerk at full length in a book kept for that purpose. And the president and secretary of such corporation shall, immediately on such removal, cause a like certificate to be deposited with the secretary of State, which shall be recorded by him in a book kept for that purpose; and they shall cause a duplicate copy of such certificate to be published in a newspaper in the county in which such corporation shall be located, or in an adjoining county; and in case of removal from one county to another, said duplicate shall be published in two newspapers, one in the county from which, and the other in the county to which, such corporation shall remove. (Id., § 31.)

§ 1358. The general assembly may at any time, for just cause, rescind the powers of any joint-stock corporation created pursuant to the provisions of this act, and prescribe such mode as may be necessary or expedient for the settlement of its affairs. (Id., § 32.)

See Const., art. II, § 17. Dissolution. §§ 1429-1434.

[Where legislature possesses power to repeal charter, and exercises it, courts will not presume that such power was improperly or unconsciously exercised. *State v. Curran*, 12 Ark. 321. Power of legislature to "alter, revoke or amend" charters considered. *Leep v. Ry. Co.*, 58 Ark. 407; s. c., 25 S. W. Rep. 75. It may restrict corporation's right to contract. *Id.*]

## VIII. INSOLVENT CORPORATIONS.

Sec. 1425. No preference to be allowed creditors of insolvent corporations, except for wages and salaries.

1426. Creditors or stockholders may institute proceedings to wind up corporations.

1427. Preferences to be set aside by the chancery court.

1428. Chancery court to give notice.

§ 1425. No preferences shall be allowed among the creditors of insolvent corporations except for the wages and salaries of laborers and employees. (Act April 14, 1893, § 1.)

§ 1426. Any creditor or stockholder of any insolvent corporation may institute proceedings in the chancery court for the winding up of the affairs of such corporations and upon such application the court shall take charge of all the assets of such corporation and distribute them equally among the

Dissolution; forgery, etc.— Stats., §§ 1429-1434, 1594.

creditors after paying the wages and salaries due laborers and employees. (Id., § 2.)

§ 1427. Every preference obtained or sought to be obtained by any creditor of such corporation whether by attachments, confession of judgment or otherwise, and every preference sought to be given by such corporation to any of its creditors, in contemplation of insolvency shall be set aside by the chancery court, and such creditor shall be required to relinquish his preference and accept his pro rata share in the distribution of the assets of such corporation; Provided, no such preference shall be set aside unless complaint thereof be made within ninety (90) days after the same is given or sought to be obtained. (Id., § 3.)

§ 1428. When any chancery court shall obtain jurisdiction of any such insolvent corporations under the provisions of this act, it shall direct notice to be given to all the creditors of such corporations to present their claims within ninety (90) days thereafter for the purpose of sharing in the assets of such corporation. (Id., § 4.)

[This act does not apply to an attachment levied before it took effect. *Davis v. Clafin Co.*, 63 Ark. 157; 38 S. W. Rep. 662, 1117.]

#### XI. DISSOLUTION.

**Sec. 1429.** When corporation ceases to exist assets vest in State.

1430. Equity courts may decree dissolution.

1431. Service of summons in such cases.

1432. Intervention of stockholders.

1433. Surrender of charter.

1434. Distribution of assets on surrender of charter.

§ 1429. If any corporation shall expire or cease to exist, either by its own limitation, judicial judgment of forfeiture of charter, or by legislative act, the common law in relation to corporations shall not be in force in relation thereto, but the goods and chattels, lands, tenements and hereditaments, and every right or profit issuing out of or appertaining thereto, moneys, credits and effects of such corporation, shall immediately vest in the State in trust for the uses and purposes by said charter contemplated; and each, every and all right, upon the expiration or dissolution of said corporation, shall be and is in abeyance until the action of the legislature shall be had thereon, unless provision shall be made by law for the management of said corporation fund in contemplation of such dissolution. (Act January 11, 1843.)

See § 1358.

[Power of legislature to create and control corporations. *State et al. v. Curran*, 12 Ark. 321; s. c., reversed, 15 How. (U. S.) 304.

Dissolution of a corporation for misuser and nonuser can only be effected by judicial trial and judgment. If a bank makes a valid assignment of its assets and property to trustees, for benefit of its creditors, it is a good cause of a forfeiture of charter. *State v. Bank*, 5 Ark. 593.

The charter of a corporation can be avoided for nonuser or misuser only by direct proceedings against it, on behalf of the State, for that purpose. Individuals cannot allege it in collateral suits until it be judicially declared. Blackwell v. State, 36 Ark. 178.

By the death of all its members a corporation is dissolved, and when from death or disfranchisement too few remain under the constitution of the corporation to continue the succession, to all purposes of action at least, the corporation itself is dissolved; but as long as the survivors are sufficient in number to continue the succession, the body remains. Id.

When so dissolved the fact may be shown colaterally. Id.]

§ 1430. Hereafter courts having equitable jurisdiction may make decrees upon the application of the stockholders or creditors of any corporation, to dissolve and wind up such corporation and to pay its debts and distribute its assets among the holders of the shares of stock thereof, in all cases where it shall be made to appear that such corporation is insolvent and therefore unable to continue its business, and in all cases where it shall be made to appear that the corporation has ceased to transact business. (Act April 12, 1893, § 1.)

§ 1431. In addition to the service of summons in such cases, as required in other suits, the plaintiff therein shall cause notice to be given by at least two insertions in some newspaper published in the county in which such corporation had its chief place of business, at least thirty days before any decree is taken therein. (Id., § 2.)

§ 1432. All stockholders shall have the right to intervene in such suits and in favor or in opposition to the proposed dissolution. (Id., § 3.)

§ 1433. Any corporation may surrender its charter by resolution adopted by the majority in value of the holders of the stock thereof and a certified copy of such resolution filed in the office of the secretary of State, and a copy thereof filed in the office of the county clerk of the county in which such corporation is organized, shall have effect to extinguish such corporation. (Id., § 4.)

§ 1434. When any corporation has surrendered its charter the chancery court shall have jurisdiction to pay its debts and to distribute its assets among the stockholders according to their several interests. (Id., § 5.)

#### CHAPTER XLVIII.

##### Criminal Law.

XXXI. Forgery, counterfeiting, etc.  
LX. Offenses against the revenue.

XXXI. FORGERY, COUNTERFEITING, ETC.  
Sec. 1594. Counterfeiting corporate seal.

1604. Forgery by officer of corporation.

§ 1594. If any person shall fraudulently make or counterfeit any instrument, stamping or impression in the figure or likeness of the seal \* \* \* of any corporation or officer thereof, or if he have in his possession

## Frauds; execution, etc.—Stats., §§ 1604, 3056–3059.

any such instrument, and conceal the same, knowing it to be falsely made and counterfeited, he shall, on conviction, be confined in the penitentiary not less than five nor more than fifteen years. (Act April 12, 1869.)

§ 1604. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign, with intent to issue, sell or pledge, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share of the capital stock of such corporation, or any certificate or other evidence of the ownership or transfer of any share in such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, promissory note, bond, bill of exchange or other evidence of indebtedness, the signing, issuing, selling or pledging of which by such president, cashier, treasurer, secretary, or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars and imprisoned in the penitentiary not less than one nor more than ten years. (Act January 22, 1855.)

## LX. OFFENSES AGAINST THE REVENUE.

Sec. 1877. President or agent of bank failing to list stock.

1879. False listing of property for taxation, perjury.

§ 1877. If the president or principal accounting officer or agent of any bank or incorporated company shall fail to comply with the provisions of the law in regard to listing or the payment of taxes on the shares or capital stock of such bank or incorporated company, at the time fixed by law for listing property or paying taxes, he shall, upon conviction thereof, be deemed guilty of a felony, and shall be fined not less than one thousand and not more than five thousand dollars, and imprisoned in the penitentiary not less than one nor more than five years; and the fine hereby imposed shall be a lien against the assets of such bank or incorporated company, and execution may issue as in other cases. (Act April 28, 1873.)

Civil liability of officers. §§ 1347, 1349–1353.

§ 1879. Any president, secretary, receiver, accounting officer, servant, agent or person who shall knowingly make any false answer to any question or statement required by law touching the business, property, moneys and credits of such person or corporation liable to taxation shall be deemed guilty of perjury. (Act April 28, 1873.)

## CHAPTER LXI.

## Execution.

Sec. 3056, 3057. Stock in corporations, how levied on.

3058. How sold; certificate to purchaser.

- Sec. 3059. Transfer on books of corporation.
- 3135. First process against, on judgment to be fi. fa., and how levied.
- 3136. In what case attachment thereafter to issue.
- 3137. Attachment, how issued.
- 3138. Effect of such service to bind debts, etc.
- 3139. Proceedings and judgment against garnishee.
- 3140. Garnishee paying money, to have credit against corporation.
- 3141. Other writs of attachment to issue, when judgment not satisfied.
- 3142. Surplus to be paid to corporations.

§ 3056. When an execution shall be issued against any shares or stock in any bank, insurance company or other corporation, it shall be the duty of the cashier, secretary or chief clerk thereof, upon the request of the officer having such execution, to furnish him with a certificate, under his hand, stating the number of rights or shares the defendant holds in such bank, company or incorporation, with the incumbrances thereon. (Rev. Stat., ch. 60, § 26.)

§ 3057. Whenever an officer, having an execution or writ of attachment in his hands, shall levy on shares or stock in corporations, he shall make such levy or seizure by leaving a true copy of such writ with the president, secretary or cashier, or other officer, with the certificate of the officer making such levy, that he levies upon and takes such rights or shares to satisfy such execution. (Act February 28, 1891, § 1.)

§ 3508. Shares or stock thus levied upon or seized, shall be sold by the officer in the same manner, as other personal property is sold under the writ by virtue of which the levy is made, and the officer, making the sale, shall execute and deliver to the purchaser thereof a certificate, which said certificate may be in the following form: I (name of the officer and his office) hereby certify, that I have this day of sold to (name of purchaser) shares of the capital stock of the (name of the corporation) in conformity with the laws of the State, which said shares were by me seized on the day of , under and by virtue of a certain writ of (describe the writ) issued and delivered to me out of the court, on the day of in favor of (name of plaintiff) against (name of defendant), for the sum and price of \$ , which was the highest and best bid therefor.

Witness my hand this day of .  
(Id., § 2.)

§ 3059. Upon presentation of such certificate to the president, secretary or cashier or other principal officer of said corporation, who has charge of the stock-books of the corporation, it shall be the duty of such officer, to issue to the holder of said certificate, a certificate of stock for the number of shares thus levied on and sold, and transfer it on the stock-books of the corporation, in the same manner as if transferred by the owner in person, and he shall also issue to such holder of the certificate of purchase,

## Executions; fees; injunctions, etc.—Stats., §§ 3135–3142, 3299, 3785.

a certificate of transfer, under the seal of the corporation, which may be recorded in the office of the county clerk of the county, as now provided for by section 1337, and when so transferred, the stock of the person whose interest has been sold by the officer under the writ of execution or attachment, shall be deemed cancelled and wholly void. (Id., § 3.)

§ 3135. The first process upon the judgment against any private corporation shall be a fieri facias, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases. (Act January 11, 1843, § 7.)

§ 3136. If the sheriff or other officer shall return upon any such writ of fieri facias that no goods and chattels, lands and tenements, can be found whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs, the circuit court shall, on the application of the plaintiff, or his attorney, issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution and return, and directed to the sheriff of the proper county. (Id., § 8.)

[Removal by a corporation of a material part of its property out of the State, ground of attachment. Simon v. Seyier Assn., 54 Ark. 58; s. c., 14 S. W. Rep. 1101.]

§ 3137. Such attachment shall be executed by summoning, as garnishee, any person having any moneys or effects belonging to such corporation, and any debtor to such corporation, who may be found within the county, to appear before the circuit court at the return of such writ, and then and there answer touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same. (Id., § 9.)

§ 3138. From the time of making such service, all moneys and effects due and owing, payable or belonging to such corporation, shall be bound until the judgment is satisfied; and no payment made thereafter to such corporation, or other disposition of any debts, moneys or effects so attached, shall be credited to the garnishee making the same, nor shall the stock owned by such person in such corporation be allowed as a set-off. (Id., § 10.)

§ 3139. Proceedings against garnissees, under the provisions of this act shall be the same as against the garnissees summoned in the case of absent and absconding debtors; but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due. (Id., § 11.)

§ 3140. For all moneys paid by any garnishee, under the provisions of this act, he shall have credit against the corporation to whom it is due. (Id., § 12.)

§ 3141. If a sufficient sum be not made to satisfy such judgment and costs, other writs

of attachment may be issued as aforesaid, from time to time, until the whole is satisfied. (Id., § 13.)

§ 3142. If any money remain in the hands of the officer, after satisfying the judgment and all costs, he shall pay the same to the corporation, or its order. (Id., § 14.)

## CHAPTER LXIV.

## Fees.

Sec. 3299. Of secretary of State.

§ 3299. The following fees shall be allowed for services performed by the secretary of State, and paid into the treasury in the same manner that all other fees are or shall be directed to be paid, viz.:

\* \* \* \* \*

For receiving each draft of articles or charter of a private incorporation, created for religious, literary, benevolent or scientific purposes, and not for purposes of pecuniary profit, directly or indirectly, \$2.50.

For filing each charter or draft of articles of a private corporation, created for any other purpose than that denoted in the preceding paragraph, excepting also railway and telegraph companies, \$25.

For each amendment or supplement thereto (and the expense of recording the same), \$10.

All the above specified fees shall be paid at the time the commission, certificate, instrument, or copy, is delivered, or the charter or draft of articles of incorporation is filed or recorded. (Act February 25, 1875, as amended by Act March 14, 1881.)

## CHAPTER LXXXII.

## Injunction.

Sec. 3785. Injunction to stop business of a corporation, notice required.

§ 3785. An injunction to stop the general and ordinary business of a corporation, or the operation of a turnpike, railroad or canal company, or of a municipal corporation, or of the trustees of a town, or any building, erection or other work, or to restrain a nuisance, or the unlawful issue or circulation of small notes or bills, can only be granted upon reasonable notice of the time and place of the application therefor to the party enjoined. (Civil Code, § 300.)

## CHAPTER CXXII.

## Pleadings and Practice.

- Sec. 5669. Service of summons on corporations.
- 5672. On foreign corporations.
- 5679. Warning order, when to be made.
- 5691. Actions against corporations, where brought.
- 5694. Against foreign corporations.
- 5701. Action in name of State to vacate or repeal charters.
- 5702. Service of process in such case.
- 5745. Pleadings, how verified by corporation.
- 5894. Service of notice on corporations.

## Receivers; service, etc.— Stats., §§ 5669–5745.

**Receivers.**

Sec. 5970. Powers and duties in cases of corporations, etc.

5971. In cases now pending receiver may be substituted as a party.

5977. Who not to be receiver.

§ 5669. Where the defendant is a corporation, created by the laws of this State, the service of the summons may be upon the president, mayor or chairman of the board of trustees, and, in case of the absence of the above officers, then it may be served upon the cashier, treasurer, secretary, clerk or agent of such corporation, and, in case of railroad corporations, upon any station agent, or upon any person who has control of any of the business of said corporation, either as clerk, agent or otherwise, who, as such agent or clerk, has to report to the corporation who employed them; and, in cases of railroad corporations, a service of a copy of the summons upon the clerk or agent of any station in the county where the same shall be issued shall be deemed and considered as a good and valid service; and in case of foreign railroad corporation who shall file its articles of incorporation with the secretary of State, process shall be served on the agent or agents of such corporation in the same manner that process is authorized by law to be served on railroad corporations existing under laws of this State. (Civil Code, § 69, amended by Act of March 13, 1889, § 2.)

Service of summons on foreign corporation. § 5672. Service of notice on corporation. § 5894. Foreign corporation must have an agent for process. § 1323. See § 1339, note.

[Provisions of a charter, regulating manner of serving process on the corporation, relates alone to the remedy, and is repealed by a subsequent general enactment prescribing manner of service in such cases. R. R. Co. v. Hecat, 29 Ark. 661. Service of process upon a corporation, return must show what. R. R. Co. v. Trout, 32 Ark. 17.]

§ 5672. Where the defendant is a foreign corporation, having an agent in this State, the service may be upon such agent. (Civil Code, § 72.)

Suits by and against foreign corporation. Const., art. XII, § 11; Statutes, §§ 1323, 1339.

[As to service of process on foreign corporation, see B. & L. Assn. v. Hallum, 59 Ark. 583; s. c., 28 S. W. Rep. 420; Union, etc., Co. v. Craddock, 59 Ark. 593; s. c., 28 S. W. Rep. 424.]

**Constructive Service.**

§ 5679. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action, that the defendant is:

First. A foreign corporation, having no agent in this State; or, \* \* \* (Civil Code, § 79.)

§ 5691. An action, other than those mentioned in sections 5684, 5685,\* against a cor-

poration created by the laws of this State may be brought in the county in which it is situated or has its principal office or place of business, or in which its chief officer resides but, if such corporation is a bank, or insurance company, the action may be brought in the county in which there is a branch of the bank or agency of the company, where it arises out of a transaction of such branch or agency. (Civil Code, § 92.)

§ 5694. An action, other than one of those mentioned in sections 5684, 5685,\* against a non-resident of this State, or a foreign corporation, may be brought in any county in which there may be property of or debts owing to the defendant. (Civil Code, § 95.)

See § 325.

§ 5701. Any action required by law to be brought in the name of the State against any corporation, or to vacate or repeal any charter, may be brought in any county in the State before any court having jurisdiction of such action. (Act November 8, 1875.)

Quo warranto, proceedings in. §§ 7364 et seq.

[Proceedings in quo warranto is the proper remedy to compel forfeiture of franchise. State v. Bank, 5 Ark. 595. Writ of quo warranto against a mere officer or servant not sufficient. Smith v. State, 21 Ark. 294.]

§ 5702. Service of process in any such action may be made in any county in the State upon any defendant to such action in like manner as is now or may hereafter be provided by law in other cases, and any such defendant shall be required to appear and defend such action in the county where the same may be commenced. (Id.)

§ 5745. The verification of any pleading of a corporation may be by any officer or agent on whom the summons in an action against the corporation may be served, or by its attorney in the action. (Civil Code, § 135.)

Verification by corporation of demands against estates. §§ 116, 117.

§ 5894. A notice to a corporation may be served in the same manner as a summons in an action against it. (Civil Code, § 710.)

See § 5669.

**Receivers.**

§ 5970. Whenever, in any case, a receiver shall be appointed for a corporation or the trustees thereof, or any copartnership or joint-stock company, and the order or decree of the court, judge or chancellor shall be that the lands, tenements, goods, chattels, funds, assets, moneys, credits, choses in action, rights and interests of every kind, name and

\*Actions regarding real property and to recover penalties and forfeitures.

Railroads; taxation — Stats., §§ 6300, 6401-6429.

nature, either in law or equity, or any part thereof, belonging to the same, shall be placed in the hands of such receiver, he shall from thenceforward, until further order or decree of the court, judge or chancellor, have full possession, custody and control thereof, and shall be vested with the title, so far as it shall be necessary to collect debts, preserve the assets and property for the benefit of creditors and all persons interested, and may and shall bring and prosecute and defend all suits in his own name that may be necessary for that purpose. (Act January 15, 1857.)

§ 5971. In all suits that may be pending in any court, prosecuted by or brought against such corporation, or trustees, or copartnership, or joint-stock company, or in which either may be interested, such receiver may be substituted as a party, on his own application, without process or revivor, and prosecute or defend the same with like effect as the original parties might or could do, and suits may progress against him by substitution in the same manner. (*Id.*)

§ 5977. No party or attorney, or person interested in an action, shall be appointed receiver therein. (Civil Code, § 325.)

## CHAPTER CXXX.

## Railroads.

Sec. 6300. Corporations may fix par value of shares, how.

§ 6300. It shall be lawful for any railroad or other incorporated company, organized under the laws of this State, to fix the par value of the shares of its capital stock at one hundred dollars per share. Provided, stock now in existence of less amount than one hundred dollars shall continue to have pro rata representation. And, provided, further, the number of shares of stock required to be owned by directors, as one of the qualifications for that office, shall be reduced in the same proportion as the par value of the shares is increased. And, provided, further, That this act shall not be so construed as to authorize the increase of the amount of capital stock of any company: (Act April 25, 1873.)

CHAPTER CXXXIV.

### **Revenue.**

Sec. 6401. Words and phrases defined.  
6402. All property taxable.  
6429. Property listed by whom.  
6462. Corporations; when and what to list.  
6463. Notice by assessor to corporation to file statement; penalty for failure or refusal.

§ 6401. \* \* \* The term "investment in bonds," wherever used in this act, shall be held to mean and include all \* \* \* certificates of indebtedness commonly called

scrip, whether issued by incorporated or unincorporated companies, \* \* \* or other corporations, held by persons residing in this State, either by themselves or by others for them, whether for themselves or as guardians, trustees or agents.

The term "investment in stocks," wherever used in this act, shall be held to mean and include all moneys invested \* \* \* in any association, corporation, joint-stock company or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this act, held by persons residing in this State, either for themselves or as guardians, trustees or agents, or by others for them.

\* \* \* \* \* The term "personal property," wherever used in this act, shall be held to mean and include:

Second. The capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name the same may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat of whatsoever name and description, used, or designed to be used, exclusively or partially, in navigating any of the waters within or bordering on this State, whether such ship, vessel or boat shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any collector's district of this State or not.

\* \* \* \* \*  
(Act March 31, 1882, § 1.)

**Property and Privileges Subject to Taxation**

§ 6402. All property, whether real or personal, in this State; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing therein; the property of corporations now existing or hereafter created, and property of all banks or banking companies now existing or hereafter created, and of all bankers and brokers, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose. (Id. § 2.)

erty for that purpose. (Id. s. 2)  
§ 6429. The property of \* \* \* corporations whose assets are in the hands of receivers, (shall be listed) by the receiver; of every company, firm, body politic or corporate, by the president or principal accounting officer, partner or agent thereof. (Act March 31, 1883, § 16.)

## Quo warranto, etc.—Stats., §§ 7364 ff.

§ 6462. Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations or associations, incorporated under the laws of this State, or under the laws of any other State, and doing business in this State, other than insurance companies, and the companies and corporations whose taxation is in this act specifically provided for, in addition to the other property required by this act to be listed, shall, through their president, secretary, principal accounting officer or agent, annually, during the month of July, make out and deliver to the assessor of the county where said company or corporation is located or doing business a sworn statement of the capital stock, setting forth particularly:

First. The name and the location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up, its market value, and, if no market value, then the actual value of the shares of stock.

Fourth. The total amount of all indebtedness, except indebtedness for current expenses, excluding from such indebtedness the amount paid for the purchase or improvement of the property.

Fifth. True valuation of all tangible property belonging to such company or corporation; such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of the State. (Act March 28, 1887, § 17.)

See Const., art. XVI, § 7.

[Mode of assessing corporations for taxes other than railway. Ry. v. Williams, 53 Ark. 63; s. c. 13 S. W. Rep. 796.]

§ 6463. The assessor shall, annually, at least ten days before the thirtieth day of June, deliver to the president, secretary, accounting officer or agent of any such company, corporation or association located in or doing business in such county a notice in writing to return such schedule by the thirty-first day of July next ensuing. Any president, secretary, principal accounting officer or agent of any such companies or corporations, upon whom such notice shall have been served, willfully neglecting or refusing to make such return by the thirty-first day of July next ensuing, after the delivery of said notice, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, and the assessor shall, from the best information he can obtain, make out and enter upon the proper assessment-roll a list, with the valuation, of all tangible and intangible property belonging to such de-

faulting company or corporation subject to taxation by the provisions of this act, with fifty per cent. penalty. (Act March 31, 1883, § 18.)

## CHAPTER CXLV.

## Statutes.

Sec. 7199. Corporation, company or person includes what.

7204. Certain words defined.

7214. Definition of foreign corporation.

7224. Rule in amending Code.

§ 7199. The words "corporation, company or person," when they occur together in any statute defining and punishing crimes, shall be construed to include \* \* \* public and private bodies, politic and corporate, \* \* \* (Act Dec. 17, 1838, § 6.)

## Rules of Construction of the Code.

§ 7204. \* \* \* The word person includes a corporation as well as a natural person \* \* \* (Civil Code, § 837.)

§ 7214. A "foreign corporation" is one created by the laws of some other State or country. (Civil Code, § 848.)

See Const., art. XII, § 11.

§ 7224. No act shall have the effect to amend or repeal, or be construed as amending or repealing, any title, chapter, article, section, clause or provision of the Code unless such intention be expressly stated, and the title, chapter, article or section shall be particularly referred to and recited in the act amending or repealing the same. (Civil Code, § 858.)

## CHAPTER CLIII.

## Usurpation of Office, etc.

Sec. 7364. In what case action at law may be brought in lieu of quo warranto.

7365. How brought to vacate charter.

7366. In case of usurpation of office, how brought.

7367. Prosecuting attorney to institute action, when.

7368. Attorney-general, when.

7370. Judgment.

7371. Pleadings, when to be verified.

§ 7364. In lieu of the writs of scire facias and quo warranto, or of an information in the nature of a quo warranto, actions by proceedings at law may be brought to vacate or repeal charters, and prevent the usurpation of an office or franchise. (Civil Code, §§ 522-531.)

See § 5701.

§ 7365. The action to repeal or vacate a charter shall be in the name of the State, and brought and prosecuted by the attorney-general, or, under his sanction and direction, by an attorney for the State.

## Reduction of stock; trusts — Acts, 1895, 1897.

§ 7366. Whenever a person usurps an office or franchise to which he is not entitled by law, an action by proceedings at law may be instituted against him, either by the State or the party entitled to the office or franchise, to prevent the usurper from exercising the office or franchise.

§ 7367. It shall be the duty of the several prosecuting attorneys to institute the actions mentioned in this chapter against all persons who have or shall usurp county offices or franchises, where there is no other person entitled thereto, or the person entitled fails to institute the same for three months after the usurpation.

§ 7368. For usurpation of other than county offices or franchises, the action by the State shall be instituted and prosecuted by the attorney-general.

§ 7370. Where a person is adjudged to have usurped an office or franchise, he shall be deprived thereof by the judgment of the court, and the person adjudged entitled thereto reinstated therein; but no one shall be adjudged entitled thereto unless the action is instituted by him. And the court shall have power to enforce its judgment by causing the books and papers, and all other things pertaining to the office or franchise, to be surrendered by the usurper, and by preventing him from further exercising or using the same, and may enforce its orders by fine and imprisonment until obeyed.

§ 7372. The pleadings in the actions named in this chapter are not required to be verified by affidavit, unless prosecuted by a private individual.

### LEGISLATIVE ACTS RELATING TO CORPORATIONS, ENACTED SUBSEQUENTLY TO 1894.

1. Reduction of capital stock.
2. Unlawful combinations.
3. Punishment of pools, trusts and conspiracies to control prices.
4. Foreign corporations.
5. Payment of wages.

#### Act 1.

**AN ACT** to authorize corporations to reduce their capital stock.

**Sec. 1.** Authorizes reduction of capital stock. How made. Proviso.  
2. Act takes effect and in force from its passage.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. That any corporation organized under the laws of this State may reduce its capital stock, either by releasing unpaid subscriptions for stock, or by refunding to shareholders a portion of the amount paid in by them. Such reduction shall be made by a resolution adopted at the regular meeting of the stockholders, or by a special meeting called for that purpose, and a copy of said resolution shall be filed as an amendment to the charter, in the offices of the secretary of State and of the county clerk in the county in which such corporation transacts business, and such copy shall also be published in some newspaper having a circulation in the county. Provided, That no such reduction shall affect or in any way impair the rights of any person who is a creditor of such corporation at the time the reduction is made.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved February 12, 1895.)

See § 1327, supra.

#### Act 2.

**AN ACT** to prevent combinations of trusts and corporations in the State of Arkansas

- Sec. 1. Prohibits the formation of combinations, trusts, etc.
2. Corporations violating provisions of this act forfeit charters.
3. Punishment fixed for violation of this act.
4. Live stock and agricultural products not subject to this act.
5. Persons damaged by trusts to sue same.
6. Circuit judges to instruct juries as to the provisions of this act.
7. Repeals all laws in conflict herewith.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations, between persons or corporations, made with a view to lessen or which tend to lessen full and free competition in the importation or the sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations, between persons or corporations designed, or which tend to advance, reduce or control the price, or the cost to the producer, or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Be it further enacted, That any corporation chartered under the laws of this State, which shall violate the provisions of this act, shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate the

## Trusts — Acts, 1897, 1899.

provisions of this act, is hereby denied the right to do so, and is prohibited from doing business in this State. It is hereby made the duty of the attorney-general of this State to enforce this provision by due process of law.

§ 3. Be it further enacted, That any violation of this act shall be deemed, and is hereby declared, destructive of full and free competition, and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall as principal, manager, director, or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders, made in furtherance of any such conspiracy, shall on conviction, be punished by any fine of not less than five hundred dollars, nor more than two thousand dollars, and by imprisonment in the penitentiary not less than one, nor more than ten years, or in the judgment of the court, by either such fine or imprisonment.

§ 4. Be it further enacted, That the provisions of this act shall not apply to agricultural products, or live stock, while in the possession of the producer or raiser.

§ 5. Be it further enacted, That any person or persons, or corporation, that may be injured or damaged by any such arrangements, contracts, agreements, trusts, or combinations, described in section one of this act may sue for and recover in any court of competent jurisdiction in this State, of any person or persons, or corporations, operating such trusts, or combinations, the full consideration or sum paid him or them for any goods, wares, merchandise or articles of sale of which is controlled by such combination or trust.

§ 6. Be it further enacted, That it shall be the duty of the judges of the circuit courts of this State to specially instruct the juries as to the provisions of this act.

§ 7. Be it further enacted, That all laws and parts of laws in conflict with the provisions of this act be, and the same are hereby repealed.

(Approved March 16, 1897.)

### Act 3.

(L. 1899, act XLI.)

**AN ACT** providing for the punishment of pools, trusts and conspiracies to control prices, and as to evidence and prosecution in such cases.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. Any corporation organized under the laws of this or any other State or country and transacting or conducting any kind of business in this State, or any partnership or individual, or other association or persons whatsoever, who shall create,

enter into, become a member of, or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed or shall enter into, become a member of or a party to any pool, agreement, contract, combination, association or confederation to fix or limit the amount of quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by any corporation, partnership, individual or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties as provided by this act.

§ 2. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars, nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalty in such case to be recovered by an action in the name of the State at the relation of the attorney-general or prosecuting attorney; the moneys thus collected to go into the county school fund of the county in which the cause accrues, except as hereinafter provided.

§ 3. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other State or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in this State, its right and privilege to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person

## Trusts — Act, 1899.

who has been acting as the agent of such foreign corporation in transacting its business in this State has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as *prima facie* proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of State, and if it be an insurance company, also to the auditor of the State who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 4. It shall be the duty of the secretary of State on or about the first day of July of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this State, a letter of inquiry as to whether the said corporation, has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary or treasurer, or any director of said company; a form of affidavit shall be inclosed in said letter of inquiry, as follows:

## AFFIDAVIT.

STATE OF ARKANSAS, }  
County of .....

of policy issued by the parties aforesaid; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or the premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by the parties aforesaid; and that it has not issued, and does not own any trust certificates, and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract, or agreement would be to place the management or control of such combination or combinations, or the manufactured products thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

(President, Secretary, Treasurer, or Director.)

Subscribed and sworn to before me, a ..... within and for the county of ..... this .... day of ..... 18....  
[SEAL.]

I, ..... do solemnly swear that I am the ..... (president, secretary, treasurer or director) of the corporation known and styled..... duly incorporated under the laws of ..... on the .... day of ..... 18..., and now transacting or conducting business in the State of Arkansas, and that I am duly authorized to represent said corporation in making this affidavit; and I do further solemnly swear that the said ..... known and styled as aforesaid, has not, since the sixth day of March, 1899 (naming the day upon which this act to take effect) created, entered into or become a member of or a party to, and was not, on the sixth day of March, 1899, nor at any day since that date, and is not now, a member of or party to, any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind

And on refusal to make oath in answer to said inquiry, or on failure to do so, within thirty days from the mailing thereof, the secretary of State shall certify said fact to the prosecuting attorney of the county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the State, and at the relation of said prosecuting attorney, to proceed against said corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this State; provided, that within thirty days after the passage of this act all foreign corporations desiring to do business in this State shall file a new bond, as the statute directs; and such sureties and bondsmen shall be liable for the penalties and forfeitures, including costs, provided for in this act.

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Foreign corporations — Act, 1899.

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§ 5. It shall be the duty of the attorney-general and the prosecuting attorney of each county, respectively, to enforce the provisions of this act. The attorney-general, the prosecuting attorneys, shall institute and conduct all suits begun in the circuit courts, and upon appeal the attorney-general shall prosecute said suits in the supreme court and courts of appeal. As compensation for his services in this behalf, the attorney-general shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the State, to be taxed as costs by the court hearing the cause. The attorney-general and the prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected, one-fourth of which shall go to the attorney-general, and three-fourths to the prosecuting attorney.

§ 6. In all suits instituted under this act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this State, where a judgment of forfeiture is obtained, and the cause is not appealed to the supreme court, the circuit court rendering such judgment shall allow the prosecuting attorney a fee of not less than twenty-five dollars or more than two hundred and fifty dollars, to be paid out of the assets of said corporation; and when the attorney-general takes part in said prosecution, he shall be entitled to his actual expenses to be paid in like manner. All action authorized and brought under this act shall have precedence, on motion of the prosecuting attorney or attorney-general, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

§ 7. That all laws and parts of laws in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage.

(Approved March 6, 1899.)

#### Act 4.

##### Foreign Corporations.

AN ACT to prescribe conditions upon which foreign corporations may do business in this State.

- Sec. 1. Certificate of appointment of agent to be filed and fee paid.
2. Certified copy of articles of incorporation to be filed with the secretary of State; fee for filing and recording fixed; certified copy evidence in courts; exempt railroads and telegraph companies.
3. Penalty for failure to comply with provisions prescribed.
4. Ninety days given to comply with act.
5. Repeals all laws in conflict and act takes effect from passage.

Section 1. Every corporation formed in any other State, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue busi-

ness therein, if already established, shall by its certificate, under the hand of the president and seal of such company or corporation, filed in the office of the secretary of State of this State, designate an agent, who shall be a citizen of this State, upon whom service of summons and other process may be made. Such certificate shall also state the principal place of business of such corporation in this State. Service upon such agent shall be sufficient to give jurisdiction over such corporation to any of the courts of this state.

Any corporation so filing such certificate in the office of the secretary of State shall pay therefor a fee of one dollar (\$1.00) for such filing, and a like fee for each subsequent appointment of an agent so filed.

§ 2. Every company or corporation incorporated under the laws of any other State, territory or country, now or hereafter doing business in this State, shall file in the office of the secretary of State of this State, a copy of its charter, or articles of incorporation, or association, or in case such company or corporation is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly authenticated, and certified by the proper authority. The secretary of State shall cause all such charters, articles of incorporation, or association, so filed to be duly recorded in a book kept for that purpose. And such corporation shall be required to pay into the treasury of the State, incorporating and other fees equal to those required of similar corporations formed within and under the laws of this State. Upon compliance with the above provisions by said corporation the secretary of State shall cause to be issued to said corporation, a copy of such charter, or articles of incorporation, or certificate so filed, properly certified under seal of his office, and a copy of such charter, or articles of incorporation or certificate, certified to by the secretary of State shall be taken by all the courts of this State as evidence that the said corporation has complied with the provisions of this act, and is entitled to all the rights and benefits therein conferred. And such corporation shall be entitled to all the rights and privileges, and subject to all the penalties conferred and imposed by the laws of this State upon similar corporations formed and existing under the laws of this State; Provided, That the provisions of this act requiring copy of original articles of incorporation, or charter, and certificate naming an agent, and to pay certain fees therefor, shall not apply to railroad companies, which have heretofore built their lines of railroad into or through this State; Provided further, That the provisions of this act is not intended and shall not apply to "drummers" or traveling salesmen soliciting business in this State for foreign corporations which are entirely nonresident. (As am. by Act May 8, 1899.)

## Wages—Act, 1899.

§ 3. On and after the going into effect of this act, any foreign corporation, as defined above, which shall refuse to comply with this act, shall be subject to a fine of not less than one thousand dollars (\$1,000) to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the prosecuting attorney of the different judicial districts of this State to see to the proper enforcement of this act. All such fines so recovered shall be paid into the general revenue funds of the county in which the cause shall accrue. In addition to which penalty, or after the going into effect of this act, no foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand whether arising out of contract or tort.

§ 4. Any foreign corporation that has heretofore engaged in business, or made contracts in this State, may within ninety days after the passage of this act, file such copy of articles of incorporation, together with certificate of appointment of an agent upon whom service of summons and other legal process may be had, in the office of the secretary of State, and pay the requisite fees thereon, as provided by this act, then all their contracts made before this act goes into effect are hereby declared as valid as if said articles of incorporation and certificate, as herein defined, had been filed before they began business in this State.

§ 5. That all laws and parts of laws in conflict herewith be and the same are hereby repealed, and that this act take effect and be in force from and after its approval. (Approved February 16, 1899.)

The effect of this act, as amended, seems to be to supersede §§ 1323-25 of General Statutes. ante.

**Act 5.****Payment of Wages.**

AN ACT for the better protection of labor in the milling and manufacturing industries of the State of Arkansas.

Sec. 1. Laborers in mills and factories to be paid wages in currency.  
 2. Violation of act by employer is usury and a misdemeanor, and subject to fine.  
 3. Repeals all laws in conflict and act takes effect ninety days after passage.

Be it enacted by the general assembly of the State of Arkansas:

Section 1. Hereafter it shall be, and it is, unlawful for any milling or manufacturing company, or any other person, corporation or company employing persons to labor for them in the State of Arkansas, to discount the wages of their employees or laborers when payment is made or demanded before the regular pay-days, more than at the rate of ten per centum per annum from the date of payment to the regular pay-day, and that all laborers shall be paid in currency at the place of business of the company, person or corporation so employing such labor in the State; unless the laborer elects to take drafts or checks in lieu of currency for pay.

§ 2. Any evasion or violation of section 1 of this act shall be usury, and a misdemeanor and the person, company or corporation or their agents, violating the same shall be fined in any sum not less than ten dollars nor more than five hundred dollars, and the entire property of the person, company or corporation shall be subject to the payment of the fine and costs.

§ 3. All laws and parts of laws in conflict herewith are hereby repealed, and this act shall take effect and be in force within ninety days after its passage.

(Approved May 8, 1899.)

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CALIFORNIA.

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# CALIFORNIA.

## LAWS OF 1899.

### CHAPTER 71.

#### Trade-Marks.

AN ACT to add a new section to the Penal Code, as follows:

§ 354½. Every person who shall wilfully deface, erase, obliterate, cover up, or otherwise remove, destroy, or conceal the duly filed trade-mark or name of another, printed, branded, stamped, engraved, etched, blown, impressed, or otherwise attached to, or produced upon any cask, keg, bottle, vessel, siphon, can, case, or other package, for the purpose of selling or trafficking in such cask, keg, bottle, vessel, siphon, can, case, or other package, or refilling such cask, keg, bottle, vessel, siphon, can, case, or other package, with intent to defraud the owner thereof, without the consent of the owner, or unless the same shall have been purchased from the owner, is guilty of a misdemeanor.

See chapter 87, post.

### CHAPTER 79.

#### Sale of Corporate Property in Foreign Country.

AN ACT to amend the Civil Code of the State of California, by adding a new section thereto, to be known and numbered as section three hundred and sixty-four thereof, relating to corporations, as follows:

§ 364. Any corporation of this State owning grants, concessions, franchises, and properties, or any thereof, in any foreign country, may sell and convey the same to the government of such foreign country, or to any person or persons, or any corporation or corporations, or association or associations, created by or existing under the laws of this or any other State or the United States, or any foreign government; provided, however, that the powers hereby granted shall only be exercised by a majority of the entire board of directors of such corporation of this State, with the concurrence in writing of the holders of two-thirds in amount of the capital stock thereof.

### CHAPTER 80.

#### Taxation.

Section 1. Section 3608 of the Political Code of the State of California is amended to read as follows:

§ 3608. Shares of stock in corporations possess no intrinsic value over and above the

actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute.

Sections 2 and 3 of the above act amend sections 3609, 3610 of the Political Code, in relation to the assessment of the shares of national banks. See Anno. Corp. L., Cal., p. 12.

### CHAPTER 87.

#### Trade-Marked Receptacles.

AN ACT to add a new section to the Penal Code, to be distinguished as section three hundred and fifty-four and one-half, as follows:

§ 354½. Every person, who wilfully sells, or traffics in any cask, keg, bottle, vessel, siphon, can, case, or other package bearing the duly filed trade-mark or name of another, printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon, or refills any such cask, keg, bottle, vessel, siphon, can, case, or other package, with intent to defraud the owner thereof, without the consent of the owner thereof, or unless the same shall have been purchased from the owner thereof, is guilty of a misdemeanor.

See chapter 71, ante.

### CHAPTER 94.

#### Foreign Corporations.

AN ACT to amend "An act in relation to foreign corporations." (Approved April 1, 1872.)

Section 1. Section one (1) of "An act in relation to foreign corporations, approved April first, eighteen hundred and seventy-two, is hereby amended to read as follows:

§ 1. Every corporation heretofore created by the laws of any other State or foreign country, and doing business in this State, shall within ninety days after the passage of this act, and any corporation hereafter

## Foreign corporations; decisions.

created by the laws of any other State or foreign country, and doing business in this State, within forty days from the time of commencing to do business in this State, designate some person residing in this State, upon whom process issued by authority by or under any law of this State may be served, and within the time aforesaid shall file such designation in the office of the secretary of State, and a copy of such designation duly certified to by the secretary of State shall be sufficient evidence of such appointment and of the due incorporation of such corporation, and it shall be lawful to serve on such person so designated, or in event that no such person is so designated, then on the secretary of State, any process issued as aforesaid. Such service shall be made on such person so designated or the secretary of State, in such manner as shall be prescribed in case of service required to be made on foreign corporations, and such service shall be deemed a valid service thereof on such corporation.

§ 2. Section two of said act is hereby amended to read as follows:

§ 2. Every corporation created by the laws of any other State or foreign country, which shall fail to comply with the provisions of section one of this act, shall be denied the benefit of the laws of this State limiting the time for the commencement of civil actions, and shall not maintain or defend any action or proceeding in any court of this State until such corporation shall have complied with the provisions of section one of this act; and in any action or proceeding in-

stituted against a body styled as a corporation and created by the laws of any other State or foreign country, evidence that such body has acted as a corporation or employed methods usually employed, by corporations, shall be received by the court in such action or proceeding for the purpose of proving the existence of such corporation; the sufficiency of such evidence shall be determined by the court before whom such action or proceeding is pending with like effect as in other cases; provided, nevertheless, that any corporation which shall have complied with the requirements of section one of the act of which this is amendatory, shall not be required to make or file any further designation of the person upon whom process may be served, but such former designation shall be deemed and taken to be a full compliance with the requirements of this act; provided further, however, that if any such corporation shall withdraw such designation heretofore made, or if the person designated shall die, or remove from the State, then, and in that case, such corporation shall, within forty days after such withdrawal, make a new designation, or be subject to the provisions and penalties of this act.

§ 3. Section three of said act is hereby amended to read as follows:

§ 3. Every corporation created by the laws of any other State or foreign country which shall comply with the provisions of section one of this act shall be entitled to the benefit of the laws of this State limiting the time for the commencement of civil actions.

See Anno. Corp. L., Cal., p. 35.

## DECISIONS.

(Include 58 Pac. Rep. 192.)

**Promoters.**

An allegation in a complaint by a corporation to compel a transfer to it of real estate, that the owners "agreed and contracted that they would sell and deliver to the plaintiff all the real property aforesaid," in consideration of the delivery to them "by plaintiff of 40,000 shares of its capital stock," is sustained by evidence that the owners made the contract with the promoters of the corporation, and that the corporation accepted the contract. Scadden Flat Gold Mining Co. v. Scadden, 121 Cal. 33; 53 Pac. Rep. 440 (1898).

**Officers; estoppel.**

Where a corporation ratifies a contract made by its president, without authority, it is bound by any declarations he may have made during the negotiation determining the

meaning of an ambiguity, since it is presumed to have notice of all the facts relating to the negotiation. Balfour v. Fresno Canal, etc., Co., Sup. Ct. Cal., 55 Pac. Rep. 1062 (1899).

The by-laws of a corporation provided that the general manager should have charge of all the company's property, and control of all persons in its employ, with power to discharge them at will, and that he should cause regular and accurate accounts to be kept by a competent bookkeeper. Held, that he was liable for funds misappropriated by the company's bookkeeper. San Pedro Lumber Co. v. Reynolds, 121 Cal. 74; 53 Pac. Rep. 410 (1898).

After allowing a person to act as its secretary, and causing its records to be authenticated by him as such, a corporation cannot deny the regularity of his appointment, or repudiate obligations signed by him under the direction of its board of directors.

## CALIFORNIA.

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### Decisions.

Barrell v. Lake View Land Co., 122 Cal. 129; 54 Pac. Rep. 594 (1898).

#### Directors; meetings.

Acts of de facto directors cannot be impeached by showing irregularity in their election. Barrell v. Lake View Land Co., 122 Cal. 129; 54 Pac. Rep. 594 (1898).

A purchase by a corporation of all the property of another corporation is not void merely because boards of directors of both corporations were the same. Smith v. Ferries & C. H. Ry. Co., Sup. Ct. Cal., 51 Pac. Rep. 710 (1897).

A meeting of directors is presumed to be regular. The burden is on the corporation to show that all the directors were not notified. It is presumed that the board of directors consists of the statutory number. Barrell v. Lake View Land Co., 122 Cal. 129; 54 Pac. Rep. 594 (1898).

Where a resolution adopted at a special meeting of the directors was spread at length on the records, and authenticated by the signature of its purported secretary, the presumption is that the directors were properly notified of the meeting. Balfour-Guthrie Inv. Co. v. Woodworth, Sup. Ct. Cal., 56 Pac. Rep. 891 (1899). Evidence held to justify finding that directors had been notified of special meeting. *Id.*

#### Contraction of debts.

It is not ultra vires for a corporation to assume the payment of bonds that were issued by another corporation in violation of Civil Code, § 309, prohibiting the contraction of debts beyond the subscribed capital stock. Smith v. Ferries & C. H. Ry. Co., Sup. Ct. Cal., 51 Pac. Rep. 710 (1897).

A corporation which, in payment for property, assumes the payment of bonds issued by another corporation, cannot retain the property and claim the bonds were invalid as being overissued in violation of Civil Code, § 309. (See Anno. Corp. L., Cal., p. 19.) *Id.*

A stockholder of a corporation, which purchased a street railroad of another corporation and agreed to assume bonds issued by it, cannot raise the question of fraud in constructing the road, or attack the validity of the bonds. *Id.*

(See above case on issue of bonds generally, rights of stockholders, and liabilities of officers.)

#### Records presumed accurate.

In the absence of an issue for that purpose, a corporation cannot show that its records, on the faith of which parties have contracted with it, and which it has not attempted to correct, are false. Barrell v. Lake View Land Co., 122 Cal. 129; 54 Pac. Rep. 594 (1898).

#### Stock and stockholders.

Shares of stock given in payment of property are a part of the "subscribed capital stock," within Civil Code, § 309. Smith v. Ferries & C. H. Ry. Co., Sup. Ct. Cal., 51 Pac. Rep. 710 (1897).

See Anno. Corp. L., Cal., p. 19, § 309.

Delivery of a certificate of stock, with a blank assignment signed and indorsed on the back thereof, is a good assignment. Brittan v. Oakland Bk. of Savings, Sup. Ct. Cal., 57 Pac. Rep. 84 (1899).

Stockholders not controlling the directors are not bound to reveal to the directors the fact that they are also stockholders in another corporation with which the directors are about to make a contract. The contract is valid, notwithstanding the concealment. Fox v. Mackay, Sup. Ct. Cal., 57 Pac. Rep. 670 (1899).

Suit by stockholders to enjoin issue of additional shares. What constitutes laches. When complaint is demurrable. McDermott v. Anaheim Union Water Co., Sup. Ct. Cal., 56 Pac. Rep. 779 (1899).

#### Liability of stockholders.

Where sureties on a company's note are obliged to pay it, they have an action at law directly against the stockholders, and cannot maintain a suit in equity to enforce subrogation to the rights of the payee of the note. Myers v. Sierra Val. Stock, etc., Ass'n, 122 Cal. 669; 55 Pac. Rep. 689 (1898).

Where several stockholders become liable and pay a company's note as cosureties, each contributing the same amount, any liability of one for a greater proportion on account of holding more stock, can only be adjusted by a suit at law pursuant to Civil Code, § 322. *Id.*

Liability of stockholders. See Anno. Corp. L., Cal., pp. 7, 22.

#### Existence.

Civil Code, sections 287, 401, permitting corporations to continue their existence for fifty years, on certain terms, is not limited to private corporations, as distinguished from quasi-public corporations. People v. Auburn & Y. J. Turnpike Co., Sup. Ct. Cal., 55 Pac. Rep. 10 (1898).

See Anno. Corp. L., Cal., pp. 14, 35, §§ 287, 401.

#### Proof of existence.

Held, error, to allow a witness to testify that a certain bank was a corporation, where it was competent and sufficient to prove by reputation that it was a de facto corporation. People v. Dole, 122 Cal. 486; 55 Pac. Rep. 581 (1898).

Where the contract sued on describes the plaintiff as a corporation, no further proof of its incorporation is necessary. Tustin

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Decisions.

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Fruit Ass'n v. Earl Fruit Co., Sup. Ct. Cal., 53 Pac. Rep. 693 (1898).

**Quo warranto.**

In quo warranto proceedings against a corporation, it is sufficient to allege the fact that it is usurping corporation functions, without legal right, without detailing the facts constituting the usurpation. Inaction by the State for many years does not create an estoppel. The continued exercise of a franchise or right is a continued usurpation, upon which a new cause of action in

favor of the State is ever arising. *People v. Reclamation District, No. 136*, 121 Cal. 522; 53 Pac. Rep. 1085 (1898).

See Anno. Corp. L., Cal. p. 38.

**Reorganization.**

Where a lessee corporation transferred all its assets except the lease, to a new corporation having the same stockholders, the new company was liable for royalties subsequently accruing, the transfer being fraudulent as to the lessor. *Higgins v. California Petroleum & Asphalt Co.*, 122 Cal. 373; 55 Pac. Rep. 155 (1898).





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COLORADO.

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# COLORADO.

## LAWS OF 1899.

### CHAPTER 89.

#### Extension of Existence.

AN ACT to enable corporations to extend the term of their incorporation.

Section 1. When the term of years for which any corporation organized under the laws of this State has expired or is about to expire by lawful limitation, and such corporation has not been administered upon as an expired corporation, or gone into liquidation, or had any settlement of its affairs, it may have its term of incorporation extended and continued the same as if originally incorporated, as hereinafter provided.

§ 2. Whenever the corporate life of any such corporation has expired or is about to expire, as aforesaid, a special meeting of the stockholders of said corporation may be called by stockholders owning at least ten per cent. of the entire capital stock of said company, and the notice of such meeting, stating the time and place thereof, and the purpose for which it is held, shall be published for four consecutive weeks in a newspaper printed nearest the place where the said corporation has kept its principal office, and likewise mailed to each stockholder of the company at least thirty days prior to the time fixed for the said meeting. At such meeting, the question of renewal shall be submitted, to the votes of the stockholders of said company, provided a majority of the stock of the corporation be represented. The votes shall be taken by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company or holds proxies therefor; and if a majority of the entire outstanding capital stock of the company shall be in favor of a renewal of the corporation, the president and secretary of said company shall, under the seal of said company, certify the fact, and shall make as many certificates as may be necessary, so as to file one in the office of the recorder of deeds in each county wherein the company may do business, and one in the office of the secretary of State; and thereupon the corporate life of said company shall be renewed for another term of not exceeding twenty years, upon filing the declaration aforesaid, and all stockholders shall have the same rights in the new corporation, so extended, as they had in the company as originally formed; Provided, That such corporations shall pay to the secretary of State the same fee as is now provided by law for filing new corporation paper; but the term of existence of any such corpora-

tion shall not be extended after the period of one year from and after the expiration of its corporate existence, and the extension of the term of existence of any such corporation in the manner herein provided, shall not be construed as to extend or renew any corporate franchises granted by any county or municipality possessed by such corporation nor to give to such corporation, during the extended term of its existence, any rights which such corporation would not have possessed had the same been incorporated as an original corporation at the date of the extension of the term of its existence; nor as enlarging any of the powers, privileges or franchises heretofore enjoyed by such corporation, provided that corporations still in active operation shall have the right to extend their corporate existence even though their charter has expired more than one year; Provided, further, That the provisions of this act shall not apply to a renewal of the charters of toll road companies.

See Anno. Corp. L., Colo., p. 10, § 473.

### CHAPTER 95.

#### Evidence of Officers of Corporation.

AN ACT regulating the admission of evidence in civil actions.

Section 1. A party to the record of any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent or managing agents of any corporation, which is a party to the record in such action or proceeding, may be examined upon the trial thereof, as if under cross-examination at the instance of the adverse party or parties, or any of them, and for that purpose may be compelled in the same manner and subject to the same rules for examination as any other witness to testify, but the party calling for such examination shall not be concluded thereby, but may rebut it by counter testimony.

### CHAPTER 103.

#### Hours of Employment.

AN ACT regulating the hours of employment in underground mines, and in smelting and ore reduction works, and providing penalties for violations thereof.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. The period of employment of working men in all underground mines or

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Labor; trade-marks; wages.

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workings, shall be eight (8) hours per day, except in cases of emergency, where life or property is in imminent danger.

§ 2. The period of employment of working men in smelters, and in all other institutions for the reduction or refining of ores or metals, shall be eight (8) hours per day, except in cases of emergency, where life or property is in imminent danger.

§ 3. Any person, body corporate, agent, manager or employer, who shall violate any of the provisions of sections one and two, of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment not more than six months, or by both fine and imprisonment.

**CHAPTER 154.****Trade-Marks.**

**AN ACT** to confer exclusive rights to the use of labels, trade-marks, terms, designs, devices or forms of advertisements and provide for the recording of the same, to provide a remedy for the violation of such right, and the penalty for the unlawful use of labels, trade-marks, terms, designs, devices and forms of advertising, and to repeal all acts and parts of act inconsistent herewith.

This act relates to use of trade-marks, labels, etc., by labor unions, associations, etc., and not to business trade-marks in general.

**CHAPTER 155.****Truck System of Paying Wages Prohibited.**

**AN ACT** in relation to the "truck system," securing to laborers and others the payment of their wages in lawful money of the United States, and prescribing penalties for a violation of this act, and repealing all acts and parts of act in conflict herewith.

**Section 1.** It shall be unlawful for any person, company or corporation, or the agent or the business manager of any such person, company or corporation, doing business in this State, to use or employ, as a system, directly or indirectly, the "truck system" in the payment, in whole or in part, of the wages of any employee or employees of any such person, company or corporation.

§ 2. The words "truck system" as used in the preceding section are defined to be: (1) Any agreement, method, means or understanding used or employed by any employer, directly or indirectly, to require his employee to waive the payment of his wages in lawful money of the United States, and to take the same, or any part thereof, in goods, wares or merchandise, belonging to the employer, or any other person or corporation.

(2) Any condition in the contract of employment between the employer and employee, direct or indirect, or any understanding whatsoever, express or implied, that the wages of the employee, or any part thereof, shall be spent in any particular place or in any particular manner. (3) Any requirement or understanding whatsoever by the employer with the employee that does not permit the employee to purchase the necessities of life where and of whom he likes without interference, coercion, let or hindrance. (4) To charge the employee interest, discount or other thing whatsoever for money advanced on his wages, earned or to be earned, where the pay days of the employer are at unreasonable intervals of time. (5) Any and all arrangements, means, or methods, by which any person, company or corporation, shall issue any truck order, scrip, or other writing whatsoever, by means whereof the maker thereof may charge the amount thereof to the employer of laboring men so receiving such truck order, scrip or other writing, with the understanding that such employer shall charge the same to his employee and deduct the same from his wages.

3. Any truck order, scrip, or other writing whatsoever, made, issued, or used in aid of or in furtherance of, or as a part of, the "truck system" as defined in this act, evidencing any debt or obligation from any person, company or corporation for wages due or to become due to any employee or employees of any person, company or corporation, issued under a system whereby it is the intent and purpose to settle such wage debt or debts by any means or device other than in lawful money, shall be utterly void in the hands of any person, company or corporation with knowledge that the same had been issued in pursuance of such system, and it shall be unlawful to have, hold or circulate the same with such knowledge.

§ 4. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail of not less than thirty days, nor more than six months.

§ 5. The violation of the provisions of any section of this act by any corporation organized and existing under the laws of this State shall be deemed sufficient cause for the forfeiture of the charter of any such corporation, and the attorney-general of the State shall immediately commence proceedings in the proper court in the name of the people of the State of Colorado, against any such corporation for the forfeiture of its charter.

§ 6. Any foreign corporation doing business in this State that shall violate the provisions of any section of this act shall forfeit its right to do business in this State,

## Decisions.

and the attorney-general of the State shall, upon such violation coming to his knowledge, by information or otherwise, institute proceedings in the proper court for the forfeiture of the right of any such corporation to do business in this State.

§ 7. That if the attorney-general of the State should fail, neglect or refuse to commence such actions as are provided for in sections 5 and 6 of this act, after demand being made upon the attorney-general to institute such proceedings by any responsible person, then any citizen of this State shall have the right to institute and maintain such proceedings, upon giving bond for costs of suit.

§ 8. The district attorney of any county shall prosecute for any violation of this act in the same manner as he may be required by law to prosecute for violation of other criminal acts, except as provided in sections 5 and 6 of this act.

§ 9. That the provisions of this act shall not be construed to prevent ditch, canal and reservoir companies from contracting or issuing orders or warrants payable at future dates in lawful money of the United States, for labor performed or services rendered for it, or to contract for and pay for the same in the capital stock of such companies, or water rights or privileges for water connected with the same.

## DECISIONS.

(Includes 58 Pac. Rep. 192.)

**Incorporation.**

The filing of a new certificate creates a new corporation, although it assumes all the debts of the old, and all of its stock is distributed to the stockholders of the old corporation. *Clough v. Otis*, Sup. Ct. Colo., 55 Pac. Rep. 809 (1898).

**Estoppel.**

A person dealing with a corporation as such is estopped from denying its corporate existence. *Grande Roude Lumber Co. v. Cotton*, Colo. App., 55 Pac. Rep. 610 (1898).

**Officers; ratification of acts.**

A general superintendent of a mining company in full charge of its affairs and property is authorized to secure the removal to a hospital and the nursing of a miner injured by machinery the superintendent was engaged in operating. *Mount Wilson Gold, etc., Mining Co. v. Burbidge*, Colo. App., 53 Pac. Rep. 826 (1898).

A chattel mortgage of a corporation executed by the proper officers, under the corporate seal, is presumed to be authorized. *Sargent v. Chapman*, Colo. App., 56 Pac. Rep. 194 (1898).

Though the secretary of a corporation has no authority to transfer commercial paper, yet the corporation may ratify the transfer. Payment by the assignor, a corporation, of the expense of collecting assigned notes, is a ratification of the secretary's unauthorized act in assigning them. *McCormick v. Bittinger*, Colo. App., 57 Pac. Rep. 736 (1898).

What constitutes ratification of contract made by president. See *Henry v. Colorado Land & Water Co.*, 10 Colo. App. 14; 51 Pac. Rep. 90 (1897).

The appointment of an agent by the board of directors of the corporation is the act of the corporation, as to third persons, notwithstanding no memorandum of the appointment is made. *Robinson Reduction Co. v. Johnson*, 10 Colo. App. 135; 50 Pac. Rep. 215 (1897).

**Directors; meetings.**

A director may recover of a corporation on a quantum meruit for services rendered outside his duties. *Ruby Chief Mining & Milling Co. v. Prentice*, Sup. Ct. Colo., 52 Pac. Rep. 210 (1898).

The fact that a director did not participate in the fraudulent misappropriation of the corporate property does not relieve him from liability to the creditors, where his neglect of duty permitted the misappropriation. *Nix v. Miller*, Colo. Sup. Ct., 57 Pac. Rep. 1084 (1899). Application of corporate funds to payment of individual debt of director is fraud, for which the directors become personally liable to creditors. *Id.* The fact that a director resigned before plaintiff became a creditor does not relieve him, where the fraudulent acts were such as to injure subsequent creditors. *Id.*

Where no record is kept of the meeting of a board of directors, its action may be proven by parol. *Hendrie & Bolthoff Mfg. Co. v. Collins*, Colo. App., 56 Pac. Rep. 815 (1899).

**Annual report.**

In an action to enforce the liability of directors for failure to file annual report under 1 Mills' Ann. Stat., § 491 (Gen. Stat. 252), the filing of an amended complaint setting up more particularly the debt and the time when it was contracted, held an amendment and not a change of the cause of action.

## Decisions.

**Clough v. Otis**, Sup. Ct. Colo., 55 Pac. Rep. 809 (1898).

Under the above statute, providing that directors shall be liable for all the debts contracted during the year next preceding the time when the report should have been filed, the measure of the director's liability is primarily imposed by the statute. *Id.*

The action may be commenced within one year from the expiration of the time allowed for filing the report. *Id.*

See Anno. Corp. L., Colo., p. 15.

Under Gen. Stat., § 252, providing that if the annual report of a corporation is not filed within sixty days after January first, the directors become personally liable for debts "contracted during the year next preceding the time when such report should \* \* \* have been made and filed." Held, that the year dates back from the end of the sixty days, and not from January 1st. *Bradford v. Gulley*, 10 Colo. App. 146; 50 Pac. Rep. 314 (1897).

Failure to file annual report, how pleaded. *Id.*

See Anno. Corp. L., Colo., p. 15, § 491 (252).

#### Stock and stockholders.

For consideration of liability of stockholders of banking corporations, see *Zang v. Wyant*, Sup. Ct. Colo., 56 Pac. Rep. 565 (1899).

The fact that a stockholder, the title to whose stock is disputed, delivers the certificate to the corporation to protect it pending litigation with notice that she will hold it responsible for its redelivery, does not operate to cancel the stock or deprive her of title. *Tom Boy Gold Mines Co. v. Green*, Colo. App., 53 Pac. Rep. 845 (1898).

See Anno. Corp. L., p. 14, § 486; p. 16, § 497.

#### Reorganization.

A creditor and stockholder agreed, upon reorganization, to surrender his stock and notes, and accept stock of the corporation instead, he retaining his notes until the agreement was signed and turned over to him. He signed the reorganization agreement and the other stockholders surrendered their stock. Held, that his execution of the

agreement operated to cancel his notes. *Hardy v. Swigart*, Sup. Ct. Colo., 53 Pac. Rep. 380 (1898).

A transaction by a reorganization committee held a payment of bonds, so that the committee could not afterwards obtain a dividend on them in foreclosure proceedings. *Maxwell Cattle Co. v. Henderson*, Colo. App., 56 Pac. Rep. 67 (1899).

#### Insolvency and dissolution.

An insolvent corporation may prefer a creditor by conveying to him all its property. *John V. Farwell Co. v. Sweetzer*, 10 Colo. App. 421; 51 Pac. Rep. 1012 (1898).

An insolvent corporation may mortgage property to one who had been until immediately preceding the transaction a stockholder, although all the stockholders are her relatives, where it is a bona fide transaction for a valuable consideration. *Burchinell v. Bennett*, 10 Colo. App. 502; 52 Pac. Rep. 51 (1898).

Since Gen. Stat., § 270, provides that the dissolution of a corporation for any cause shall not take away or impair any remedy for liabilities incurred previous to its dissolution, a judgment against a corporation is valid, although rendered after dissolution, if the cause of action arose before dissolution. *Steinhauer v. Colmar*, Colo. App., 55 Pac. Rep. 291 (1898). Merely appointing a receiver for a corporation does not dissolve it. *Id.*

See Anno. Corp. L., p. 20, § 509 (§ 270).

#### Foreign corporations.

Contracts of a foreign corporation doing business in Colorado are not invalidated, and its capacity to sue thereon is not affected by failure to comply with Gen. Stat., §§ 261, 262, requiring the corporation to file a copy of its charter and of the law under which it was organized with the secretary of State, and that a failure so to do shall render the officers and stockholders individually liable on its contracts. *Helvetia Swiss Fire Ins. Co. v. Edward P. Allis Co.*, Colo. App., 53 Pac. 242 (1898).

See Anno. Corp. L., Colo., p. 17, §§ 499, 500 (§§ 261, 262).





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**CONNECTICUT.**

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# CONNECTICUT.

## LAWS OF 1889.

### CHAPTER 41.

#### Employment of Children.

AN ACT concerning instruction and employment of children.

Section 1. Any person who shall employ any child under fourteen years of age during the hours while the school which such child should attend is in session, and any person who shall authorize or permit on premises under his control any such child to be so employed, shall be fined not more than twenty dollars for every week in which such child is so employed.

§ 2. Section 2105 of the general statutes is hereby repealed.

### CHAPTER 45.

#### Action by Foreign Attachment.

AN ACT providing for the trial of actions commenced by foreign attachment when the defendant does not appear.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

When in any action commenced by process of foreign attachment and brought to or pending in the superior court, court of common pleas, or district court, the defendant shall not appear, if the plaintiff shall not within four months after the day on which the process in said action is returnable to said court, take a default in said action, the court may at any time thereafter, upon the motion of any garnishee in said action, assign the same for trial.

See Anno. Corp. L., Conn., p. 9.

### CHAPTER 50.

#### Stock; Transfer; Lien of Corporation.

AN ACT amending an act relating to the stock of corporations.

Section 1. Section 1923 of the general statutes is hereby amended to read as follows: When not otherwise provided in its charter, the stock of every corporation shall be personal property, and be transferred only on its books, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock owned by any person therein, for all debts

due to it from him; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator, and if there be none, his heir at law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed.

See Anno. Corp. L., Conn., p. 15, § 1923.

### CHAPTER 119.

#### Factories; Regulations.

AN ACT concerning factories and the factory inspector.

Section 1. Section 2265 of the general statutes is hereby amended to read as follows: All factories and buildings where machinery shall be used shall be well lighted, ventilated and kept as clean as the nature of the business will permit. The belting, shafting, gearing, machinery and drums of all factories and buildings where machinery shall be used, when so placed as, in the opinion of the inspector, to be dangerous to the persons employed therein while engaged in their ordinary duties, shall, as far as practicable, be securely guarded. No machinery other than steam engines in a factory shall be cleaned while running, after notice forbidding the same is given by the inspector to the owners or operators of the factory.

### CHAPTER 178.

#### Liens for Taxes.

AN ACT concerning certain liens for taxes.

Section 1. Banks, national banking associations, trust, insurance, investment, turnpike, bridge, and plank-road companies shall have a lien upon the stock of each nonresident stockholder for the reimbursement of the sums required to be paid by said corporations as taxes upon said stock.

§ 2. Section 3917 of the general statutes is hereby repealed, but this repeal shall not impair the validity of any existing lien.

See Anno. Corp. L., Conn., p. 26, § 3917 for section repealed.

Stock fees; privilege taxes; preferred stock.

### CHAPTER 230.

#### Fees for Creation or Increase or Reduction of Stock.

AN ACT concerning fees to be paid to the State for the creation of and the increase of capital stock of private corporations.

Section 1. Upon every bill or resolution affecting private interests, other than appropriation bills or resolutions, passed by the general assembly, there shall be paid for the use of the State a fee of five dollars for each legal page or fractional part thereof, and upon such bill or resolution creating any corporation with a capital stock, there shall also be paid for the use of the State a franchise fee of one dollar for each thousand dollars of the capital stock of such corporation, but such fee shall in no case be less than fifty dollars.

§ 2. The fees provided by this act shall be paid to the treasurer of the State before the engrossed copy of such bill or resolution shall be transmitted by the clerk of bills to the secretary, and in case such bill or resolution shall not be approved or become a law, the treasurer shall return the fees so paid as aforesaid.

§ 3. In case any corporation shall, under the authority of a resolution or private act of the general assembly desires to increase its capital stock, before such increase shall be valid said corporation shall file with the secretary of the State a certificate stating the amount of such increase to be made, and shall pay for the use of the State to such secretary a franchise fee of one dollar for each thousand dollars for such increase to be made.

§ 4. This act shall be an amendment to the charter of every private corporation containing a provision for an increase of the capital stock of such corporation; but it shall not be so construed as to require the payment of an additional franchise tax from any corporation which has paid the full franchise tax under chapter CXCVIII of the public acts of 1897 on the full amount of stock it is authorized to issue.

§ 5. Chapter CXCVIII of the public acts of 1897 is hereby repealed.

See Anno. Corp L., Conn., p. 36, Act 22, for ch. 198 of L. 1897, repealed by above act.

### CHAPTER 227.

#### Privilege Taxes; Preferred Stock; Directors; Report; Increase of Stock.

AN ACT relating to joint stock corporations.

#### Privilege taxes.

Section 1. Every corporation hereafter organized under the laws of this State relating to joint stock corporations shall, before it commences to do business, and before it receives from the secretary of the State

any certificate of its organization, pay to the treasurer of this State a sum equal to fifty cents on every one thousand dollars of its subscribed capital stock up to five million dollars; and it shall pay upon every one thousand dollars of its subscribed capital stock in excess of five million dollars the sum of ten cents on every one thousand dollars of such stock in excess of five million dollars; and whenever it shall increase its capital stock it shall pay to the treasurer of this State, before it shall have authority to issue certificates of such increased capital stock, the sum of fifty cents on each one thousand dollars of increased capital stock until its total capital stock shall be five million dollars, and upon any increase of capital stock above five million dollars it shall pay to the treasurer of this State the sum of ten cents on each one thousand dollars of capital stock subscribed for in excess of five million dollars. All sums paid to the treasurer, under the provisions of this section, shall be in lieu of all other tax upon the franchise of such corporation, but it shall not be in lieu of any taxes imposed upon by law upon the property of such corporation, or upon the shares of stock held by individual stockholders residing in this State. The provisions of this section shall not apply to any corporation having authority, by its articles of association, to do business only within the limits of this State, and every corporation, limited by its articles of association to do business solely within the limits of this State, shall pay to the treasurer of the State, under the provisions of this act, a franchise tax of ten cents on every one thousand dollars of its subscribed or increased capital stock.

#### Classes of preferred stock.

§ 2. Any corporation in this State having power, under the provisions of chapter CII of the public acts of 1893, to issue preferred stock, may issue preferred stock of different classes of preference; the holders of which may, if so agreed, in case of winding up of the corporation, be paid up to the full par value of such preferred stock, out of the net assets available for distribution to stockholders, before the holders of other stock receive anything; and, if the holders of a majority of the common stock shall so vote, the holders of such preferred stock may be given the right to exchange such preferred stock for common stock, on such terms and conditions as may be determined by said vote; provided, however, that the total capital stock of the corporation shall not be increased by such exchange.

See Anno. Corp. L., Conn., p. 30, Act 8.

#### Directors.

§ 3. The property and affairs of every corporation organized under the laws governing

## Reports; dissolution.

the organization of joint stock corporations shall be managed by three or more directors who shall be chosen annually by the stockholders at such time and place as may be provided by its by-laws, and who shall be stockholders in the corporation, and such directors may fill any vacancy which may happen in their board for the current year; provided, that at least one director of every corporation organized under the general laws of this State shall at all times be a resident of this State. The directors shall choose one of their number to be president, and shall also choose a secretary and treasurer, and such other officers as the by-laws of the corporation shall prescribe, who shall hold their offices until others are chosen in their stead; provided, that the treasurer and secretary, or an assistant treasurer and assistant secretary of every corporation carrying on business under the joint stock laws of this State, either within the State or out of it, shall always be residents of this State.

It shall be the duty of every corporation, organized under the laws governing the organization of joint stock corporations, to file in the office of the secretary of the State the names of the resident directors, and of the resident secretary and treasurer, or assistant secretary and assistant treasurer, and the location by town or city, and the street and number, if any, of its principal office in this State. The provisions and requirements of section 1950 of the general statutes which are inconsistent with the provisions of this section are hereby repealed. It shall be the duty of every corporation organized under the general or special laws of the State, whenever there is a change at the annual meeting of the resident directors, or of the resident secretary or treasurer, or assistant secretary or assistant treasurer, or a change in the location of its principal office in this State, to file in the office of the secretary of the State a certificate setting out the names of the then resident directors, secretary, treasurer, assistant secretary, or assistant treasurer, and the changed location of its principal office.

**Report to secretary of State.**

§ 4. Chapter LXV of the public acts of 1899 is hereby amended to read as follows: The president and treasurer of every joint stock corporation shall, annually, on or before the fifteenth day of February or August, lodge with the town clerk of the town in which such corporation is located, and in the office of the secretary of the State at Hartford, a certificate signed and sworn to by them, showing the condition of its affairs as nearly as the same can be ascertained, on the first day of December or January, or on the first day of June or July next preceding the time of making such

certificate, in the following particulars, to wit: 1. The amount of capital stock annually paid in. 2. The names of all the directors and officers, with the date of election or appointment, term of office, residence, and address of each. 3. The location of its principal office in this State. The secretary of State shall furnish blanks in proper form for said returns, and the secretary of State and town clerk shall record said certificate in a book to be kept in their several offices for that purpose.

See Anno. Corp. L., Conn., p. 22, § 1956.

**Dissolution.**

§ 5. Section one of chapter CCXXIV of the public acts of 1895 is hereby amended to read as follows: The superior court in the county in which any corporation organized under or chartered by the laws of this State has its principal place of business may, in its discretion, as a court of equity, on the complaint of any one or more of the stockholders owning at least one-tenth of its capital stock, decree a dissolution of such corporation and order its affairs to be wound up, if the court shall find that for a period of ten years prior to the date of such complaint it has not both earned and paid dividends aggregating in the whole five per centum of its capital stock, or that it has willfully violated its charter or exceeded its powers, or that there has been any fraud or collusion or gross mismanagement in the conduct or control of such corporation, which has resulted to the detriment of the plaintiff stockholders without their connivance and consent; provided, that in any application or proceeding brought for such dissolution, any stockholder or stockholders, other than the plaintiff or plaintiffs, whether original defendants or upon entering as defendants for this purpose, may, in the discretion of the court, upon written notice, obtain a valuation of the whole capital stock of the corporation, to be made by the court or by a committee appointed by the court, upon which valuation such defendant or any party in interest may, at his option, buy the plaintiff's stock as next hereinafter provided, at the valuation so determined. Within ten days after said valuation is made by the court, or the report of the committee making it is accepted by the court, the defendant or defendants, who have applied for the valuation, shall file with the clerk of the court a written statement or notice stating whether or not they accept said valuation and elect to buy the plaintiff's stock thereof, and, in case of acceptance, shall, at the same time, deposit with the clerk of the court the price of the plaintiff's stock at such valuation. The plaintiff or plaintiffs shall thereupon, within ten days, file with the clerk of the court a written notice stating whether or not he or they accept said price,

## Increase of stock; decisions.

and, in case of acceptance, shall thereupon cease to have any interest in their stock, and shall at the same time deliver to said clerk their stock certificate or certificates with proper endorsements of transfer, and shall receive from the clerk the price of said stock so deposited with him. Upon the plaintiff or plaintiffs accepting said price and delivering their stock certificates, or refusing so to accept and deliver, the proceedings for dissolution shall be terminable at the motion of the defendant or defendants asking for the valuation, or may be terminated in the discretion of the court, upon the motion of the corporation, or any defendant, and judgment may be entered accordingly; but, if the valuation is not accepted, or the payment above provided for is not made within said time by any defendant or party in interest, the action shall proceed to final judgment. The expenses of the valuation being taxed by the court shall, if the dissolution proceedings are terminated thereby, be paid by the corporation, but if such valuation be rejected by the defendant or defendants applying therefor, or such payment is not made within said time by them, the expenses thereof, taxed as aforesaid, shall be paid by them; otherwise they shall be added to the final costs in the case.

See Anno. Corp. L., Conn., p. 33, Act 16.

## Increase of stock.

§ 6. Every corporation having a capital stock may from time to time increase its capital stock by issuing additional shares thereof, of the same par value whether common or preferred stock, under such limitations as to the amount issued, and

of every other nature whatsoever, as may either exist in the charter of the corporation or in any statute affecting the corporation; Provided, That at a meeting of the stockholders of the corporation duly warned for that purpose, such increase shall have been authorized, within a certain limit as to amount, by a vote of at least two-thirds of each class of stock of the corporation, issued at the time of said vote, and that the directors in issuing or disposing of such additional shares of stock shall proceed in accordance with any lawful provisions inserted in said vote authorizing such increase of stock. In case any corporation shall issue any additional shares of stock, a certificate, signed and sworn to by a majority of the directors of the corporation, shall be filed and recorded in the office of the secretary of the State, and a duplicate thereof shall be filed and recorded in the office of the town clerk of the town where the corporation is located, which certificate shall contain a statement fully specifying the number of additional shares issued, the par value thereof, and the consideration paid therefor according to the facts in each case, and a statement that at least twenty per centum of the par value thereof has been paid therefor in cash. No such certificate shall be received or recorded by the secretary of the State or any town clerk unless it contains such statements. Section 1954 of the general statutes is hereby amended by striking out the words "increase or" in the first and fifth lines thereof, and section 1955 is hereby repealed.

See Anno. Corp. L., Conn., p. 22, §§ 1954-1955.

## DECISIONS.

(Include 44 Atl. Rep., Oct. 4, 1899.)

## Subscription to capital stock; liability for unpaid subscriptions; action to enforce liability.

A subscription for capital stock of a proposed corporation, as trustee therefor, is not bona fide within general statutes, section 1947 (Anno. Corp. Laws, Conn., p. 20), forbidding the commencement of business until all the stock is subscribed for by bona fide subscribers. Unless the transaction shows a contrary intent, a subscription for stock of a proposed corporation, made (by authority of the stockholders) by the subscriber as trustee for the corporation, binds the subscriber though it does not bind the corpora-

tion. *Johnstown v. Allis*, (Conn. Sup. Ct.), 41 Atl. Rep. 816.

A subscriber for capital stock of a proposed corporation, whose subscription was made as trustee for the company, subscribed and swore that his subscription was to the capital stock, and then filed it with the secretary of State and the town clerk of the town where the company was located, and published it in a newspaper in said town, as required by law. It was held that as against creditors of the insolvent company, who dealt with it in reliance on the subscription, the subscriber could not deny that the subscription was binding in him. *Id.*

## Decisions.

Where a trustee of an insolvent corporation demanded of a stockholder payment of his subscription, to pay the debts and expenses, there being no other delinquent subscribers, and the subscriber refused to pay anything, on the ground that he was in no way liable, he cannot when sued by the trustee therefor, avail himself of the defense that the court declaring the insolvency had made no call on subscribers, as provided by Gen. Stats., § 519, since the call is intended to give notice of the amount to be paid and of the time, and the trustee's demand fulfilled its purpose. *Id.*

A trustee of an insolvent corporation, in suing for stock subscriptions, need not allege the amount needed to pay its debts. Under a claim that all unpaid capital stock subscriptions are necessary to pay the debts of the corporation, its trustee in insolvency may recover what the proof shows is needed to pay its debts in full, and the expenses of settlement. *Id.*

#### **Liability of stockholders for unpaid subscriptions; transfer of stock.**

Where one accepted a transfer of shares of stock and his name appeared on the books of the corporation as that of a registered stockholder, he cannot avoid liability thereon by showing that another is the equitable owner of the stock standing in his name; and the fact that the company had notice of such equitable ownership does not preclude it or its receiver from enforcing unpaid subscriptions on the stock against such holder of record. An assignment of stock in a corporation and demand for entry of the transfer on the books, do not take effect to change the liabilities of the parties as shareholders until the transfer on the books is actually made, unless the entry is wrongfully withheld by the recording officer, in which case the corporation carried profit by its own violation of legal duty. Where the transferee of stock in a corporation, which had never been delivered, refused to consent to an entry of the transfer to him on the books of the corporation, the corporation was in no fault for declining to enter such transfer. *Russell v. Estabrook (Conn. Sup. Ct.), 40 Atl. Rep. 905.*

(As to liability for unpaid subscriptions see Conn. Stats. 31, 929; Anno. Corp. L., Conn., p. 15.)

#### **Alien stockholders; taxation of stock.**

A State has a right to debar aliens from holding stock in its corporations, or to admit them to that privilege only on such terms as it may prescribe. Constitution, U. S., Amdt. 14, providing that no State shall deny to any person within its jurisdiction the equal protection of the laws, is only for the benefit of persons who are physically

within the territorial jurisdiction of the State, the protection of whose laws they invoke. *State v. Travellers' Ins. Co., 70 Conn. 590; s. c., 40 Atl. Rep. 465.*

Pub. Acts, 1897, ch. 153, § 2 (Anno. Corp. L., Conn., p. 35), imposing a tax on corporation whose stock is liable to taxation, and not otherwise taxed, while in form a tax against the corporation, is in substance against each of its non-resident stockholders, to be paid by it in their behalf, since a lien is given the corporation on the stock of each non-resident for such purpose. The fact that section 3917 of the Gen. Stats. (Anno. Corp. L., Conn., p. 26), gives the corporation a lien on the stock of each non-resident stockholder to the extent of only 1 per cent. of its value, and that Pub. Acts, 1897, ch. 153, § 2 (supra), requires the corporation to pay as taxes 1½ per cent. of the value of the stock held by non-residents, does not deprive the corporation of property "without due process of law," since section 1923 of Gen. Stats. provides that any corporation shall have a lien on all stock owned by any person therein for all "debts" due to it from him, and section 3901 provides that all taxes properly assessed shall become a "debt." *Id.*

Non-resident stockholders by becoming or remaining members of a corporation subsequent to the passage of Pub. Acts, 1897, ch. 153, § 2 (supra), will be deemed to have assented to any tax which the corporation might have legally paid for the benefit of such members under the terms of that act, and so to have come under a contractual obligation for the reimbursement of the moneys thus advanced. *Id.*

The sovereign form which gives the shares of a corporation their being can also give them situs within its territory for the purpose of taxation, notwithstanding the property they represent is located and taxed in another State. Pub. Acts, 1897, ch. 153, § 2, which provides for a tax on stock in a corporation which "is liable to taxation, and not otherwise taxed" does not prevent the taxing of shares of stock, though the property which they represent is situated and taxed in another State, since the statute only applies to the shares themselves. *Id.*

#### **Corporate existence.**

Though section 1947 of the general statutes provides that a corporation shall not commence business until its certificate is lodged in the proper recording office, it has a qualified existence from the date of its first meeting, at which directors are to be chosen and by-laws adopted; and consequently fraudulent misrepresentations made to its directors after its first meeting, which are the inducement to the corporation's entering into a contract after it is entitled to commence business, give it a cause of action.

## Decisions.

Schoefield Gear & Pulley Co. c. Schoefield, 70 Conn. 500; s. c., 40 Atl. Rep. 1046.  
(See Gen. Stats. of Conn., § 1947; Anno. Corp. L., Conn., p. 20.)

**Insolvent corporation; taxes as preferred claim.**

A corporation succeeded a partnership, acquiring in payment of subscriptions to its capital stock certain real and personal property belonging to the partnership, under conveyance, part of the consideration for which was its undertaking to pay certain of the partnership debts. The corporation passed into the hands of a receiver. The town presented a bill for taxes, part of which was assessed against the partnership on real and personal property which passed to the corporation, and part was assessed against the corporation on real estate. No tax liens had been filed. It was held that the provisions as to the assumption of certain partnership debts, in the deeds of conveyance, created no specific charge upon the property conveyed, and the partnership debts, including the taxes assessed against the partnership, are postponed to the payment of the corporation debts. *Lamkin v. Baldwin & Lamkin Mfg. Co.*, 43 Atl. Rep. 593.

**Liability of directors for payment of dividends when corporation is insolvent.**

The general rule, even in the absence of a statute on the subject, is that dividends in a going concern can be properly declared and paid only out of profits, and not out of capital or assets required for the security and payment of creditors. Where it appears that a director, when he participated in the declaration and payment of dividends, knew, or had the means of knowing, that the money paid really and in fact belonged to the creditors of the corporation, because it was required for the payment of their claims, and could not be legally paid away, under the form of a dividend to one standing in his position; it was held that the director was liable for the money so received by him, and that an action might be brought by the receiver against him to recover the same. (Conn. Stats., § 1932.) *Davenport v. Lines*, 44 Atl. Rep. 17.

(See Anno. Corp. L., Conn., p. 17.)

**Damages for assault by agent of corporation.**

Private corporations, as well as individuals, may, for their own acts, become liable in punitive damages. A corporation is not liable in punitive damages for an assault by a floor manager appointed to regulate the dancing at a ball given by it, committed by putting his hand on the plaintiff's shoulder, "rudely, insolently or angrily," and while she was on the ball-room floor, "at the same time telling her she could not dance then,

and that she was not a fit person to be there." *Maisenbacker v. Society Concordia*, Sup. Ct. Conn., 42 Atl. Rep. 67.

**Authority of officers to indorse notes.**

Where the treasurer of a manufacturing corporation, having possession of a note indorsed by him as such, presents it for discount on representations that he has authority, as treasurer, to indorse and negotiate it, the indorsee is ordinarily justified in accepting such representations as proof of authority; and hence, in an action on the note, in the absence of proof of actual want of authority, he need only show the indorsement, and representations of authority. *Standard Cement Co. v. Windham Nat. Bank*, Sup. Ct. Conn., 42 Atl. Rep. 1006.

**Dissolution of corporation; effect of foreign judgment.**

A default judgment against a corporation recovered in another State on service made outside of that State creates no personal obligation on the corporation, and cannot be proved as a claim against it in proceedings for its dissolution. *Ward v. Conn. Pipe Mfg. Co.*, Sup. Ct. Conn., 41 Atl. Rep. 1057.

**Rights of foreign creditors. Pub. Acts, 1895, p. 491, when not applicable.**

A citizen of another State, prosecuted attachment against a corporation of Connecticut, for which within sixty days after the levy, a receiver was appointed in Connecticut, in dissolution proceedings, may apply the property attached to the satisfaction of his claim, and, if insufficient therefor, file a claim for the balance as other creditors, since Pub. Acts, 1895, p. 491 (Anno. Corp. L., Conn., p. 32), dissolving attachments against corporations where a receiver is appointed for the corporation within sixty days after the levy, does not apply to proceedings pending in other States. On filing a claim in proceedings to dissolve a corporation, a foreign creditor who, before commencement of the dissolution proceedings, attached the property of the corporation in another State, is chargeable with the net proceeds of the property only, even though it sold for less than its fair market value. *Id.*

**Appointment of receiver; conveyance; effect of Pub. Acts, 1895, p. 571.**

Under Pub. Acts, 1895, p. 571, § 1, authorizing the dissolution of a corporation where the interests of the shareholders require it, and on petition of two-thirds of the stockholders, a receiver was appointed for a corporation, and its officers were directed to convey to him the corporate property, and they thereupon conveyed property situated in another State. No objection was

## Decisions.

made by the remaining stockholders or the corporation to the appointment of a receiver, and on service of the application, the corporation consented to an immediate hearing. Held, that the conveyance was voluntary and valid against creditors of other States. Id.

Where a foreign creditor, with notice of the appointment of a receiver, obtained a judgment against it in another State, and, under execution thereon, sold property be-

longing to it situated in such State, equity will compel him, as a condition precedent to a participation as a creditor in the distribution of assets, to pay to the receiver the value of the property so taken, under Gen. Stats., § 1942, and Pub. Acts, 1895, p. 573, § 3 (Anno. Corp. L., Conn., pp. 17, 33), authorizing the court, on the dissolution of a corporation, to make such order with reference to the distribution of its assets as may be just and conformable to law. *Id.*







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## DELAWARE.

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# DELAWARE.

## LAWS OF 1899.

### CHAPTER 273.

#### General Corporation Law.

[Note.—This act is applicable to all corporations hereafter incorporated. Corporations organized prior to its enactment are subject to its provisions, and are governed thereby, unless the charter or act under which they were incorporated are inconsistent with such provisions. See sections 23 and 138 of this act, post.]

#### AN ACT providing a general corporation law

- § 1. Purposes for which formed.
- 2. Powers.
- 3. Additional powers.
- 4. Banking powers denied.
- 5. Amendment of act.
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- 8. Other provisions to be contained in certificate.
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- 21. Officers.
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## DELAWARE.

## Purposes; powers.

- § 127. State fees.
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**Purposes for which formed.**

Section 1. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this act as hereinafter provided; excepting for such purposes as are excluded from the operation of a general law by section 1 of article 9, of the Constitution of this State, upon making and filing a certificate of incorporation in writing in manner hereinafter mentioned.

Const., art. 9, § 75 (Anno. Corp. L., Del., p. 5.)

**Powers.**

§ 2. Every corporation created under the provisions of this act shall have power:

1. To have succession, by its corporate name, for the time stated in its certificate of incorporation, and when no period is limited, it shall be perpetual.

2. To sue and be sued, complain and defend in any court of law or equity.

3. To make and use a common seal and alter the same at pleasure.

4. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding in value the amount limited in its charter, and all other real estate which shall have been bona fide mortgaged to the said corporation by way of security, or conveyed to it in satisfaction of debts previously contracted, or purchased at sales upon judgments or decree which shall have been obtained for such debts and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest.

5. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

6. To make by-laws not inconsistent with the Constitution or laws of the United States or of this State, fixing and altering the number of its directors for the management of

its property, the regulation and government of its affairs, and for the certification and transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars.

7. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.

See Laws of Del., 1893, chap. 70, §§ 1, 2 (Anno. Corp. L., Del., p. 7); chap. 147 (vol. 17), (Act of Mch. 13, 1883), § 1 (Anno. Corp. L., Del., p. 10), and annotations thereunder which are applicable to the powers conferred by this section.

**Additional powers.**

§ 3. In addition to the powers enumerated in the second section of this act, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, and the powers expressly given in its charter or in its certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

This section seems to provide that all corporations organized prior to the passage of this act are to be subject to its provisions except so far as such provisions are inconsistent with the charter or acts under which they were incorporated. But see § 138, post, p. 18, repealing all inconsistent acts.

**Banking powers denied.**

§ 4. No corporation created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold and silver bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

**Amendment of act.**

§ 5. This act may be amended or repealed, at the pleasure of the legislature, but such amendment or repeal shall not take away or impair any remedy against any corporation created under this act, or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every such corporation except so far as the same are inapplicable and inappropriate to the objects of such corporation.

## DELAWARE.

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### Certificate; management.

#### Conduct of business and officers out of State.

§ 6. Any corporation created under this act may conduct business in this State, other States, the District of Columbia, the Territories and Colonies of the United States and in foreign countries, and have one or more offices out of this State, and may hold, purchase, mortgage and convey real and personal property out of this State; provided, such powers are included within the objects set forth in its certificate of incorporation.

#### Certificate of incorporation.

§ 7. The certificate of incorporation shall set forth:

1. The name of the corporation, which shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this State.

2. The name of the city or town, county or place within the county in which its principal office or place of business is to be located, in this State.

3. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on.

4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares in which the same is divided and the par value of each share; the amount of capital stock with which it will commence business which shall not be less than one thousand dollars; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created. Provided, however, that the provisions of this paragraph shall not apply to religious or literary corporations, unless it is desired to have a capital stock; in case any religious or literary corporation desires to have no capital stock it shall be so stated, and the conditions of membership shall be also stated.

5. The names and places of residence of each of the original subscribers to the capital stock, or if there be no stock, of the original corporators.

6. Whether or not the corporation is to have perpetual existence, if not the time when its existence is to commence and the time when its existence is to cease.

7. By what officers or persons the affairs of the corporation are to be conducted and the time and place at which they are to be elected.

8. The value of real and personal estate of which the corporation may become seized and possessed.

9. The highest amount of indebtedness or liability, which the corporation may at any time incur.

10. Whether the private property of the stockholders, not subject by the provisions of the law under which it is organized, shall be subject to the payment of corporate debts, and if so, to what extent.

See Act of 1883, chap. 147 (vol. 17, G. L., 1893), § 11, and notes thereunder.

#### Other provisions to be contained in certificate.

§ 8. The certificate of incorporation may also contain any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any classes of the stockholders; provided, such provisions are not contrary to the laws of this State.

#### Authentication and record of certificate; copy evidence.

§ 9. The certificate shall be signed and sealed by the original corporators, or a majority of them, and shall be acknowledged before any officer authorized by the laws of this State to take acknowledgments of deeds, to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth; said certificate shall be filed in the office of the secretary of State, who shall furnish a certified copy of the same under his hand and seal of office, and said certified copy shall be recorded in the office of the recorder of deeds of the county where the principal office of said corporation is to be located in this State in a book to be kept for that purpose; said certificate or a copy thereof duly certified by the secretary of State, accompanied with the certificate of the recorder of the county wherein the same is recorded under his hand and the seal of his office stating that it has been recorded, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid shall be evidence in all courts of law and equity in this State.

#### Amendment of certificates.

§ 10. Amendments and alterations of the original certificate may be made by a supplemental certificate, made, signed, acknowledged, filed and recorded in the same manner in every respect as is provided in reference to the original certificate.

#### Management of corporation, before election of directors.

§ 11. Until the directors are elected, the signers of the certificate of incorporation, shall have the direction of the affairs and of the organization of the corporation and may take such steps as are proper to obtain

## Existence; stock subscriptions; elections.

the necessary subscriptions to stock and to perfect the organization of the corporation.

**Corporate existence begins on filing certificate.**

§ 12. Upon making the certificate of incorporation and causing the same to be filed and a certified copy thereof recorded as aforesaid, and paying the license tax therefor to the secretary of State, the persons so associating, their successors and assigns, shall from the date of such filing, be and constitute a body corporate, by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

**Capital stock; subscriptions; failure to pay installments.**

§ 13. The capital stock shall be paid in such amounts and at such times as the directors may require; and when any corporation is authorized to commence business, it may, if its whole capital stock has not been subscribed, open books for additional subscriptions to its capital stock; and when any stockholder fails to pay any installment on his stock when requested by the directors, they may sell sufficient of the stock of such delinquent at public sale to pay the amount due, with costs and interest, having first given him twenty days notice in writing, if he resides in the county, or, if not, by letter mailed to his last known address, of the time and place, when and where, the stock will be sold, or they may collect it by action at law; if no bidder can be had to pay the amount due on the stock and it cannot be collected then said stock may be forfeited to the corporation and the amount previously paid in, by the delinquent on the stock shall be forfeited to the corporation by order of the board of directors, and such stock sold by it, within one year from the time of such forfeiture; if the stock is sold, and there remains a surplus after the payment of the amount due, with interest and costs, such surplus shall be paid to the original owner of the stock, his executors, administrators or assigns.

**Assessment of stock to pay creditors.**

§ 14. When the whole capital stock of a corporation shall not have been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of the par value of such share as fixed by the charter of the company, or its certificate of incorporation, or such proportion of that sum as shall be required to satisfy the debts of the company, which said sum or proportion thereof may be recovered as provided for in section 44 of this act.

**Lien on stock.**

§ 15. No corporation shall take as security for any debts a lien upon any part of its capital stock, or be the holder or purchaser of any part thereof, unless such lien or purchase shall be necessary to prevent loss upon a debt previously contracted.

**Shares deemed personal property.**

§ 16. The shares of stock shall be deemed personal property and transferable on the books of the company in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments, and at such time or times as shall be determined by the directors or managers, and an action at law may be maintained in the name of the corporation to recover any portion of an installment which shall remain due and unpaid for the period of twenty days after the application of the money which may arise from the proceeds of the sale of the delinquent shares of stock as herein provided; and whenever transfer of shares shall be made for collateral security, and not absolutely, the same shall be so expressed in the entry of the said transfer.

**Voting; list of stockholders.**

§ 17. After the first election of directors no stock shall be voted on at any election which shall have been transferred on the books of the company within twenty days next preceding such election, and it shall be the duty of the officer who shall have charge of the transfer books to prepare and make, at least ten days before every election, a complete list of stockholders entitled to vote, arranged in alphabetical order. Such list shall be open at the principal office or place of business for said ten days, to the examination of any stockholder and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. Upon the neglect or refusal of the said directors to produce such list at any election they shall be ineligible to any office at such election. The stock ledger, or if there be none, then the transfer books of the company shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the company or to vote, in person or by proxy, at any election. The original or duplicate books of any corporation organized under this act, in which the transfers of stock shall be registered, and the original or duplicate books containing the names and addresses of the stockholders, and the number of shares held by them, respectively, shall, at all times, during the usual hours for business, be open to the examination of every stockholder at its principal office or

## Dividends; directors; officers.

place of business in this State, and shall original or duplicate books shall be evidence in all courts of this State.

**Dividends.**

§ 18. No corporation created under the provisions of this act, nor the directors thereof, shall make dividends except from the surplus or net profits arising from its business, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this act, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall be jointly and severally liable in an action on the case at any time within six years after paying such dividend to the corporation and to its creditors or any of them in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out, or reduced, with interest on the same from the time such liability accrued; provided, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the books containing the minutes of the proceedings of the directors, at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal office.

**False statements.**

§ 19. If the directors or officers of any corporation organized under the provisions of this act, shall knowingly cause to be published or given out any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, shall be jointly and severally, individually liable for any loss or damage resulting therefrom.

**Directors; elections.**

§ 20. The business of every corporation organized under the provisions of this act, shall be managed by a board of not less than three directors, except as hereinafter provided, each of whom shall own in his own right not less than three shares of capital stock; they shall hold office until their successors are respectively elected and qualified and a majority of them shall constitute a quorum for the transaction of business and at least one of whom shall be a resident of this State. All elections for

directors shall be by ballot, and shall be held in this State unless the by-laws otherwise provide; and in the first instance, the directors shall be elected at a meeting held before the corporation is authorized to commence business, and thereafter at an annual meeting of the stockholders to be held on the day and at the place named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held, and notice of any change shall be given to each stockholder twenty days before the election is held; and if, for any cause, an election is not held on the day named in the by-laws a special meeting for that purpose shall be called within thirty days thereafter, of which due notice shall be given by the secretary to each stockholder, in person or by letter mailed to his last known address.

A stockholder shall be entitled to one vote for each share of stock he may hold and may vote at any meeting by proxy, in writing, signed by him, and attested by him in such manner as the by-laws may prescribe; and a vacancy in the board of directors shall be filled by the board, and the directors so appointed shall hold office until the next annual election and until their successors shall be duly elected and qualified.

The directors of any corporation organized as aforesaid, may, by a vote of the stockholders, be divided into one, two, or three classes, the term of office of those of the first class to expire at the annual meeting next ensuing, of the second class one year thereafter, of the third class three\* years thereafter; and at each annual election held after such classification, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

See Act of March 13, 1883, chap. 147 (vol. 17), §§ 17, 18, and notes thereunder.

**Officers.**

§ 21. Every corporation organized under this act, shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until their successors are chosen and qualified; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the proceedings of the meetings of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer may be required to give bond in such sum, and with such surety or sureties as shall be provided by the by-laws, for the faithful discharge of his duty.

The secretary and treasurer may or may not be the same person.

\* So in session laws.

## DELAWARE.

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Stock; meetings; by-laws; assessments.

**Other officers; failure to elect; vacancy.**

§ 22. The corporation may have such other officers, agents and factors as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws, or determined by the board of directors, and may secure the fidelity of any or all of such officers by bond or otherwise; and may also provide by the by-laws for the qualification of any or all of such officers before any person authorized by law to administer an oath.

A failure to elect annually a president, secretary, treasurer or other officer shall not dissolve a corporation.

Any vacancy occurring among the directors or in the office of president, secretary or treasurer, by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision, such vacancy shall be filled by the board of directors.

**Vote of stock held by trustees; of stock pledged.**

§ 23. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy may represent said stock and vote thereon.

**Stock belonging to corporation.**

§ 24. Shares of stock of the corporation belonging to the corporation shall not be voted upon directly or indirectly.

**First meeting.**

§ 25. The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators named in the certificate of incorporation, designating the time, place and purpose of the meeting; and such notice shall, at least two weeks before the time of any such meeting, be published three times in some newspaper of the county where the corporation may be established, or have its principal place of business; or said first meeting may be called without such publication of notice if two days' notice be personally served on all the parties named in the certificate of incorporation, or if all the parties named in the certificate shall, in writing, waive notice and fix a time and place of meeting, then no notice or publication whatever shall be required of such first meeting.

**By-laws, power to make.**

§ 26. The power to make and alter by-laws shall be in the stockholders, but any

corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the directors or stockholders.

**Increase of capital stock.**

§ 27. Every corporation organized under the provisions of this act, may, at any meeting called for that purpose, notice of which shall be given, as required for the first meeting, increase its capital stock and the number of shares therein until it shall reach the amount named in the original certificate, and every stockholder shall have a certificate under the seal of the corporation, signed by the president and treasurer, certifying the number of shares owned by him in such corporation.

**Amendment of certificate to increase capital.**

§ 28. Whenever more capital stock is deemed necessary for the transaction of the business of any corporation, created under the provisions of this act, or existing under the laws of this State, an additional certificate may be filed, under the hands and seals of two-thirds in interest of the stockholders, or their legal representatives, stating the amount of such additional capital required, which shall be acknowledged, filed and recorded in the manner heretofore provided for in this act, with respect to the original certificate; and the said corporation shall pay to the secretary of State the license tax required by law upon such increase of capital; provided, that for all stock, issued under any such supplemental certificate, such corporation, its directors and stockholders, shall be entitled to the benefits and subject to all the liabilities contained in this act as to such corporation.

**Assessment of stock by directors.**

§ 29. The directors of every corporation organized under this act, may, from time to time, assess upon each share of stock not fully paid up such sum of money as two-thirds of the stockholders in interest shall direct, not exceeding in the whole the balance remaining unpaid on said stock up to the par value thereof; and such sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, the said directors having given thirty days' notice of the time and place of such payments in a newspaper of the county where such corporation is established or has its principal place of business, or by written notice mailed to each stockholder at his last known post-office address.

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Assessments; officers; dissolution.

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**Collection of assessment.**

§ 30. If the owner of any shares shall neglect to pay any sum assessed, for thirty days after the time appointed for the payment thereof, the treasurer of the corporation when ordered by the board of directors, shall sell at public auction such number of the shares of such delinquent owner as will pay all assessments then due from him, with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement for three weeks successively, once in each week before the sale, in a newspaper of the county where such corporation is established; and notice shall be mailed by the treasurer of the corporation to such delinquent stockholder, if his post-office address is known twenty days before such sale.

**Certificate of payment of stock.**

§ 31. The president and directors with the secretary and treasurer of every corporation organized under this act, upon payment of each installment of capital stock, and upon payment of each installment of every increase thereof, shall make a certificate, stating the amount of the installments so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any previously paid and reported, which certificate shall be signed and sworn or affirmed to by the president, and secretary or treasurer, and they shall, within thirty days after the making of such payment or payments cause the certificate to be filed in the office of the secretary of State.

**Penalty for failure of officers to perform duties.**

§ 32. If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted after the making of such payments as provided for in the preceding section and before the filing of such certificate.

**Reduction of capital stock.**

§ 33. Any corporation organized under this act, may reduce its capital stock at any time by a vote of, or by the written consent of stockholders representing two-thirds of its capital stock, and after notice of the proposed decrease has been mailed to the address of each stockholder at least twenty days before the meeting is held for that purpose; and a statement of the reduction

shall be signed and acknowledged by the president and a majority of the directors, and filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be. No such reduction, however, shall be made in the stock of any corporation until all its debts which are not otherwise fully secured shall have been paid and discharged.

**Dissolution.**

§ 34. If it should be deemed advisable, in the judgment of the board of directors, and most for the benefit of any corporation organized under this act, that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, beginning within said ten days cause a like notice to be inserted in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so-named, and which meeting may on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time, for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent together with a list of the names and residences of the directors and officers, certified by the president and secretary or treasurer, shall be filed in the office of the secretary of State, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of State of an affidavit of the manager or publisher of the said newspaper that said certificate has been published four weeks successively, and at least once a week in said newspaper, the corporation shall be dissolved; and the president and directors, or the managers of the affairs of the said corporation, at the time of its dissolution, by

**Dissolution; receivers; surrender.**

whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation, at the time of its dissolution, as far as such moneys and property shall enable them.

Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary but on filing said consent in the office of the secretary of State, he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

**Actions by and against trustees on dissolution.**

§ 35. The persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the trustees of such corporation, describing it by its corporate name, and shall be suable by the same name for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts to the amount of the moneys and property of such corporation at the time of its dissolution, which shall come to their hands or possession.

**Continuance of corporation after dissolution.**

§ 36. All such corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established.

**Trustees and receivers; appointment by chancellor.**

§ 37. When any corporation organized under this act, shall be dissolved in any manner whatever, the chancellor, on application of any creditor or stockholder of such corporation, at any time, may either continue such directors, trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under

them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the chancellor shall think necessary for the purpose aforesaid.

**Jurisdiction of chancellor.**

§ 38. The chancellor shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

**Duties of trustees or receivers.**

§ 39. The said trustees or receivers after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

**Surrender before beginning business.**

§ 40. Before the payment of any part of the capital and before beginning business for which the corporation was created, the incorporators named in any certificate of incorporation may surrender all their corporate rights and franchises, by filing in the office of the secretary of State a certificate, verified by the oath or affirmation of a majority of the incorporators named in any certificate of incorporation that no part of the capital has been paid and such business has not been begun, and surrender all rights and franchises, and thereupon the said corporation shall be dissolved.

**No abatement, suggestion on record.**

§ 41. If any corporation organized under this act becomes dissolved by the expiration of its charter or otherwise, before final judgment obtained in any action pending or commenced in any court of record of this State, against any such corporation, the said action shall not abate by reason thereof, but the dissolution of said corporation being suggested upon the record, and the names of the trustees or receivers of said corporation being entered upon the record, and no-

## Process; liability of officers and stockholders.

tice thereof served upon said trustees or receivers, or if such service be impracticable upon the counsel of record in such case, the said action shall proceed to final judgment against the said trustees or receivers by the name of the corporation.

**Filing of decree or judgment.**

§ 42. Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the court of chancery, the said decree or judgment shall be forthwith filed by the register in chancery of the county in which such decree or judgment shall be entered, in the office of secretary of State, and a note thereof shall be made by the secretary of State on the charter or certificate of incorporation, and on the index thereof, and be published by him in the next volume of laws, which he shall cause to be published.

**Service of legal process.**

§ 43. Service of legal process upon any corporation created under this act shall be made by delivering a copy thereof personally to the president of such corporation, or by leaving the same at his dwelling-house or usual place of abode. If the president resides out of the State service thereof may be made by delivering a copy thereto of the secretary or one of the directors of said corporation, or by leaving the same at the dwelling-house or usual place of abode of such secretary or director, or at the principal office or place of business of the corporation in this State. Service by copy left at the dwelling-house or usual place of abode, or at the said principal office or place of business in this State to be effective must be delivered thereat at least six days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto; Provided, That process returnable forthwith must be served personally.

**Liability of officers, and actions to enforce the same.**

§ 44. When the officers, directors or stockholders of any corporation, organized under this act, shall be liable by the provisions of this act, to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action on the case against any one or more of them and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.

**Action against corporation for debts paid.**

§ 45. When any officer, director or stockholder shall pay any debt of a corporation for which he is made liable by the provisions of this act, he may recover the amount so paid, in an action against the corporation for money paid for its use, and in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

**Judgment against corporation and return of execution unsatisfied before sale of property of director, etc.**

§ 46. No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall be stayed, after execution levied or other proceedings to acquire lien, until such return shall have been made.

**Receivers or trustees to file inventory.**

§ 47. Receivers or trustees shall, as soon as convenient, file in the office of the register in chancery of the county in which the corporation's principal place of business is a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of their proceedings, whenever and as often as the court shall direct.

**Creditors to prove claims.**

§ 48. All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the office of the register in chancery of the county in which the corporation's principal place of business is, within six months from the date of the appointment of a receiver or trustee for such corporation, or sooner if the court shall order and direct, and all creditors and claimants failing to do so, within the time limited by this act, or the time prescribed by the order of the court may, by direction of the court be barred from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of the time fixed for the filing and making proof of said claim.

**Adjustment of claims.**

§ 49. It shall be the duty of the register in chancery, immediately upon the expira-

## Receivers; employees; consolidation.

tion of the time fixed for the filing of claims, in compliance with the provisions of the preceding section of this act, to notify the receiver or trustee of the filing of said claims, and it shall be the duty of said receiver or trustee within thirty days after receiving said notice, to inspect said claims, and if said trustee or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, said receiver or trustee shall forthwith notify the creditors, whose claims are disputed, of his decision; the said receiver or trustee shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the receiver or trustee shall direct, and such creditors shall produce such books and papers relating to their claims as shall be required; and the receiver or trustee shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination. Provided, however, that every creditor or claimant, when he shall have received notice from said receiver or trustee, that he is not satisfied with the said claim as filed in the office of the register in chancery, shall have the right, within ten days thereafter, to demand that the said receiver or trustee shall certify the said claim to the court of chancery, which court shall have jurisdiction to pass upon the said claim as presented, and to determine the rights of the claimant, and to make such order or decree touching the same as shall be equitable and just; and provided, further, that when any creditor or claimant shall submit himself to such examination in relation to his claim, as the receiver or trustee shall direct, and the receiver or trustee shall pass upon and allow or disallow such claim, the creditor or claimant so submitting himself, or any other creditor or claimant, shall have the right of appeal to the court of chancery, which court shall hear and determine the rights of the claimant, and shall make such order or decree touching the same as shall be equitable and just.

## Receiver, party to suits.

§ 50. A receiver shall, upon application by him in the court in which any suit is pending, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was so pending at the time of his appointment; and no action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor or against the corporation in case no new receiver is appointed.

## Sale of perishable or deteriorating property.

§ 51. Whenever the property of an insolvent corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting such lien, the court of chancery may order the receiver or trustee to sell the property of the corporation, clear of all incumbrances, at public or private sale for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of such sale into the court, there to remain subject to the order of the said court, and to be disposed of as the court shall direct.

## Lien of employees.

§ 52. Whenever any corporation, formed under the provisions of this act, shall become insolvent, the employees doing labor or service of whatever character in the regular employ of such corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding two months' wages respectively, which shall be paid prior to any other debt or debts of said corporation; but the word "employee" shall not be construed to include any of the officers of such corporation.

## Compensation of receivers.

§ 53. The court of chancery, shall, before making distribution of the assets of an insolvent corporation, among the creditors or stockholders thereof, allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in said court, to be first paid out of the assets.

## Consolidation or merger.

§ 54. Any two or more corporations organized under the provisions of this act, or existing under the laws of this State, for the purpose of carrying on any kind of business of the same or similar nature, may consolidate into a single corporation which may be either one of said consolidating corporations, or a new corporation to be formed by means of such consolidation; the directors or a majority of them, of such corporations, as desire to consolidate, may enter into an agreement signed by them, and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as provided in this act, as

## Consolidation.

well as the manner of converting the shares of each of the old corporations into the new, with such other details and provisions as are deemed necessary.

Written notice of the time and place of a meeting to consider the purpose of entering into such an agreement, shall be mailed to the last known post-office address of each stockholder of each corporation, at least twenty days prior to the time of such meeting, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of the principal place of business of each corporation, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity and adoption of such an agreement; that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified and acknowledged as herein provided for original certificates of incorporation, and filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be; said certificate, or a copy thereof duly certified by the secretary of State, shall be evidence in all courts of law and equity in this State.

## Effect of consolidation or merger.

§ 55. When the agreement is signed, acknowledged, filed and recorded, as in the preceding section is required, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; Provided, That all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective former cor-

porations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

## Payment for stock of dissatisfied stockholders on consolidation.

§ 56. If any stockholder in either corporation consolidating as aforesaid, who objected thereto in writing, shall within twenty days after the agreement of consolidation has been filed and recorded, as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the value of the stock at the date of consolidation; in case of disagreement as to the value thereof, it shall be ascertained by three disinterested persons, one of whom shall be chosen by the stockholder, one by the directors of the consolidated corporation and the other by the two selected as aforesaid; and in case the said award is not paid within sixty days from the making thereof, and notice thereof given to said stockholder and said consolidated corporation, the amount of the award shall be evidence of the amount due by said corporation, and may be collected as other debts are by law collectible; on receiving payment of the award, said stockholder shall transfer his stock to the said consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

## Actions after consolidation.

§ 57. Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

## Liabilities not affected by consolidation.

§ 58. The liability of corporations created under this act, or existing under the laws of this State, or the stockholders or officers thereof, or the right or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.

## Bonds and stock of consolidated corporation.

§ 59. When two or more corporations are consolidated, the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or

**Sale of franchise; forfeiture; name.**

interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue capital stock, to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment for the original shares, in the manner and on the terms specified in the agreement of consolidation.

**Sale of franchise.**

§ 60. If the franchise and property of any corporation formed under the provision of this act, or existing under the laws of this State is sold, the persons who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation for the continuation, operation and management of the same; and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to, or acquired by the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this act. Such corporation shall be formed by articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of the provisions of this act, set forth the description of the property sold and the decree under which the sale was made; if it was sold under judgment, or if not, the deed conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The articles shall be signed by the purchaser and his associates, if any, and shall be filed in the office of the secretary of State, who shall furnish a certified copy of the same under his hand and seal of office, which shall be recorded as hereinbefore provided for certificates of incorporation; and when a certificate of such fact is delivered to the purchaser the corporation shall be deemed to be organized, and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this act.

**Sale of corporate property and franchises.**

§ 61. Sales of the property and franchises of such corporations that may be sold under a decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more

mortgages, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such mortgage or mortgages or if the property and franchise will produce so much then for the amount of interest due under said mortgage or mortgages, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they become due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but when a sale shall be ordered to be made, subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from incumbrances. Sales under this section shall be made on such credits as the court may deem proper.

**Forfeiture of charter for failure to commence business.**

§ 62. Any corporation organized under this act shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its organization, to commence in good faith the business, or to promote the objects or purposes for which it was organized.

**Want of legal organization no defense in actions.**

§ 63. No corporation organized under this act or existing under the laws of this State, shall be permitted to set up, or rely upon the want of legal organization as a defense to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defense.

This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of the corporation or its lawful possession of any corporate power it may undertake to assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain such challenge shall be admissible in any such suit or proceeding.

**Name, etc., to be displayed on principal office.**

§ 64. Every corporation organized under this act, shall in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word "Incorporated". And immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, shall appear

## New certificates; transfers; State fees.

in letters sufficiently large to be easily read the word "Incorporated". And such corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars, to be recovered with costs by the State, before any court of competent jurisdiction, by action at law to be prosecuted by the attorney-general.

**Issuing new certificates of stock for lost or destroyed.**

§ 65. Every corporation organized under this act, may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the corporation against any claim that may be made against it on account of the alleged loss of any such certificate; a new certificate may be issued without requiring any bond when, in the judgment of the directors it is proper so to do, and when any such corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives, may apply to the superior court of the State of Delaware in and for the county in which the principal office of the corporation is located for an order requiring the corporation to show cause why it should not issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition duly verified, in which shall be stated the name of the corporation, the number and date of certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the corporation to show cause at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition; a copy of the petition or order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary, treasurer or any director thereof personally or left at the principal office or place of business of the corporation in this State at least five days before the time designated in the order.

**Proceedings.**

§ 66. At the time and place specified in the order, and on proof of service thereof,

the court shall proceed to hear the proofs and allegations in behalf of the parties in interest, relative to the subject-matter of inquiry, and if upon such hearing the court shall be satisfied that the petitioner is the lawful owner of the number of shares of capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot be found, and no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order of court; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

**Transfer of stock.**

§ 77. That the stock of every company formed under this act shall be deemed personal estate and be transferable in the manner prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been paid.

**Copies etc., evidence.**

§ 126. That a copy of any articles of association for construction of railways filed and recorded in pursuance to the provisions of this act, or of the record thereof, with a copy of the affidavit aforesaid, indorsed thereon or annexed thereto, and duly certified to be a copy by the secretary of State, shall be presumptive evidence of the incorporation of such corporation and of the facts therein stated.

**State fees.**

§ 127. On filing any certificate or other paper, relating to corporations, in the office of the secretary of State, the following fees and taxes shall be paid to the secretary of State, for the use of the State; for certificate of incorporation fifteen cents for each thousand dollars of the total amount of capital

**Situs; renewals.**

stock authorized, but in no case less than twenty dollars, and when any certificate of increase of the capital stock shall be filed as required by this act, the secretary of State shall demand and receive for the use of the State, fifteen cents on each one thousand dollars of such increase; and when two or more corporations shall consolidate or merge, he shall demand and receive for the use of the State fifteen cents on each one thousand dollars of capital authorized beyond the total authorized capital of the corporations consolidated or merged, but in no case less than twenty dollars.

Upon receiving and filing a certificate of dissolution, change of name, amended certificates of organization, (other than those authorizing increase of capital stock,), decrease of capital stock, increase or decrease of the number of shares, he shall demand and receive twenty dollars. All other certificates five dollars. Provided, that in case of corporations for religious, charitable or educational purposes the tax shall not be charged or collected.

The fees of the secretary of State under this act shall be as follows:

For certified copies, the same as is now provided by law for the secretary of State for certificates and copying; for receiving, filing and indexing certificates, statements, affidavits, decrees, agreements, surveys, reports and any other papers provided for by this act two dollars in each case; for recording and indexing certificates, articles of association and other papers required by this act to be recorded by the secretary of State the same fees as are now provided by law for the recording of deeds.

**Situs of corporation.**

§ 128. For all purposes of title, action, attachment, garnishment, taxation and jurisdiction of all courts held in this State, the situs of the ownership of the capital stock of all corporations existing under the laws of this State whether organized under this act or otherwise, shall be regarded as in this State.

**Renewal of charters.**

§ 129. Any corporation, existing under the laws of this State, may, at any time before the expiration of the time limited for its existence, procure a renewal of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing debts, duties and liabilities, secured or imposed by its then existing charter, by filing a certificate of its president and secretary, duly sworn or affirmed to by such officer before any person authorized by the laws of this State to administer oaths or affirmations, with the secretary of State; which certificate shall set forth:

1. The name of the corporation, which shall be the existing name of said corporation at the time of such renewal.

2. The name of the city, town or place within the county in which its principal office or place of business is located in this State.

3. The date when such renewal is to commence, which date shall be prior to the date of the expiration of the charter desired to be renewed, whether or not such renewal is to be perpetual, and, if not perpetual, the time for which such renewal is to continue.

4. That the corporation desiring to renew and so renewing its charter is duly organized and carrying on the business authorized by its existing charter.

**Filing certificate, and recording copy.**

§ 130. Such certificate for the renewal and continuance of the existence of any such corporation shall be filed in the office of the secretary of State, who shall furnish a certified copy of the same under his hand and seal of office; said certified copy shall be recorded in the office of the recorder of the county in which the principal office of said corporation is located in this State, in a book kept for the purpose; and said certificate or a certified copy thereof duly certified under the hand of the secretary of State and his seal of office accompanied with the certificate of the recorder of the county wherein the same is recorded under his hand and seal of his office, stating that it has been recorded, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid, or the record of such certified copy recorded in the recorder's office aforesaid, shall be in\* evidence in all courts of law and equity of this State.

**State tax.**

§ 131. Upon the renewal of the existence of any corporation it shall pay to the secretary of State, for the use of the State, a tax of twenty dollars before the delivery of a certified copy of its certificate of renewal by him to it.

**Renewal.**

§ 132. Any corporation, desiring to renew, extend and continue its corporate existence, shall upon complying with the provisions of sections 129, 130 and 131 of this act, and with the provisions of section 2 of article 9 of the Constitution of this State, be and continue for the time stated, in its certificate of renewal a corporation and shall, in addition to the rights, privileges and immunities conferred by its original charter, possess and enjoy all the benefits of this act, which are applicable to the nature of its business, and shall be subject to the restrictions and

\* So in session laws.

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Power to hold stock; amended certificate; meetings; office.

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liabilities by this act imposed on such corporations.

**May hold stock, etc., of other corporations.**

§ 133. Any corporation created under the provisions of this act may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this State or any other State, country, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.

**Amended certificate, before payment of capital stock.**

§ 134. It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to file with the secretary of State, an amended certificate, duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged in the manner in this act required for certificates of incorporation, in this act heretofore provided for, modifying, changing or altering its original certificate of incorporation in whole or in part; said secretary of State shall furnish a certified copy of said certificate under his hand and seal of office, and said certified copy shall be recorded in the office of the recorder of the county in which its original certificate of incorporation was recorded; said amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; Provided, however, That nothing herein contained shall permit the insertion of any matter not in conformity with the provisions of this act. For filing any such amended certificate of incorporation the secretary of State shall receive for the use of the State, a tax of twenty dollars, and if the capital stock of the corporation is increased by any such amended certificate he shall receive, as aforesaid, an additional sum of fifteen cents for each one thousand dollars of increase.

**Changes and amendments.**

§ 135. Every corporation organized under this act may change the nature of its business, change its name, change the par value of the shares of its capital stock, change the location of its principal office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendments, change or alteration as may be desired, in manner following:

The board of directors shall pass a resolution declaring that such change or alter-

ation is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail; if two-thirds in interest of each class of the stockholders having voting power shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged by said president and secretary, before any officer authorized by the laws of this State to take acknowledgment of deeds, to be the act, deed and certificate of such corporation. And such certificate acknowledged as aforesaid, together with the assent in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of State, and a copy thereof duly certified by the secretary of State shall be recorded in the office of the recorder of the county in which the original certificate of incorporation is recorded, and upon so filing and recording the same, the certificate of incorporation shall be deemed to be amended accordingly; Provided, That such certificate of amendment, change or alteration shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of State that such certificate and assent have been filed in his office, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid, shall be taken and accepted as evidence of such change or alteration in all courts and places.

**Meetings of corporation; principal office.**

§ 136. That in all cases where it is not otherwise provided by the by-laws, the meetings of the stockholders of every corporation in this State shall be held at its principal office in this State; the directors may hold their meetings, and have an office or offices outside of this State, if the by-laws or certificate of incorporation so provide; and every corporation shall maintain a principal office or place of business in this State, and have an agent resident of this State in charge thereof.

**Stocks, kinds, etc.**

§ 137. Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks exceed two-thirds of

## Kinds of stock; franchise taxes.

the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and place, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporators shall be bound to pay thereon a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum payable quarterly, half-yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock, unless its original certificate of incorporation shall otherwise provide, no corporation shall create preferred stock, except by authority given to the board of directors by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose; the terms "general stock" and "common stock" are synonymous. When any corporation shall issue stock for labor done or personal property or real estate or leases thereof, in the absence of fraud in the transaction the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.

**Changes and alterations.**

§ 138. Any corporation of this State existing at the time this act becomes a law, whether created by special act of the legislature or general law, may change the nature of its business, be permitted to hold real and personal property of a greater or less amount in value, increase or decrease its capital stock, change its name, change the par value of the shares of its capital stock, change the location of its principal office or place of business in this State, and fix any method of altering its by-laws permitted by any law of this State, in the manner prescribed in section 135 of this act, and any corporation may in the same manner relinquish one or more branches of its business or extend its business to such branches as might have been inserted in its original charter or certificate of incorporation, not contrary to the laws of this State.

§ 139. All laws or parts of laws inconsistent with the provisions of this act, are hereby repealed; provided, however, that all rights, privileges and immunities vested or accrued by and under prior laws, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and under laws prior hereto shall not be impaired, diminished or affected hereby.

(Approved March 10, 1890.)

**CHAPTER 166.****Franchise Tax.**

**AN ACT** to raise revenue for the State by taxing certain corporations.

**Subjects of taxation.**

Section 1. That every telegraph, telephone, cable or electric light company, or company organized for the distribution of electricity, heat or power, or organized for the purpose of producing or distributing steam, heat or power, every express company, not owned by a railroad company and not otherwise taxed, every company organized for the purpose of the production, distribution, or sale of gas, every parlor, palace, or sleeping car company, every oil or pipe line company, every life insurance company, every fire, marine, live stock, casualty or accident insurance company, except mutual fire insurance companies which do not issue policies on the stock plan, hereafter incorporated under the laws of this State shall pay an annual tax, for the use of the State by way of a license for its corporate franchise as hereinafter mentioned; provided, however, that no company or society shall be construed to be a life insurance company within the purview of this act, which, by its certificate of incorporation shall have for its object, the assistance of sick, needy or disabled members, the defraying of funeral expenses of deceased members, or to provide for the wants of the widows and families of members after death.

**Annual report.**

§ 2. That on or before the first Tuesday of January next and annually thereafter, it shall be the duty of the president, treasurer or other proper officer of every corporation hereafter incorporated of the character specified in the preceding section, to make report to the secretary of State, stating specifically the following particulars, namely: Each telegraph, telephone, cable or express company not owned by a railroad company and not otherwise taxed, shall state the gross amount of its receipts from business done in this State for the year preceding the making such report; each gas company and electric light company shall state the amount of its receipts for light or power supplied within this State for the year preceding the making of each report, and the amount of dividends declared or paid during the same time; each company organized for the distribution of heat or power or organized for the purpose of producing or distributing steam, heat or power, shall state the amount of its receipts for the distribution of heat or power, or for the production or distribution of steam, heat or power within this State for the year pre-

## Franchise tax; rate.

ceding the making of such report, and the amount of dividends declared or paid during the same time; each parlor, palace or sleeping car company shall state the gross amount of its receipts for fare or tolls for transportation of passengers within this State during the same time; each oil or pipe line company engaged in the transportation of oil or crude petroleum shall state the gross amount of its receipts from the transportation of oil or petroleum through its pipes or in and by its tank or cars in this State during the same time; each fire, marine, live stock, casualty or accident insurance company shall state the total amount of premiums received by it for insurance upon the lives of persons resident or property located within this State, during the same time.

**Making false statement or neglecting to make statement, etc.**

§ 3. If any officer of any corporation required by this act to make a return to the secretary of State, shall, in such return, make any false statement, he shall be deemed guilty of perjury; if any such corporation shall neglect or refuse to make such return within the time limited as aforesaid the secretary of State shall ascertain and fix the amount of the annual license fee or franchise tax, and the basis upon which the same is determined, in such manner as may be deemed by him most practicable, and the amount so fixed by him shall stand as such basis of taxation under this act.

**Rate of tax.**

§ 4. That each telegraph, telephone, cable, and express corporation shall pay to the State treasurer for the use of the State, an annual license fee or franchise tax at the rate of one per centum upon the gross amount of its receipts so returned or ascertained; that each corporation organized for the distribution of electricity, heat or power, or organized for the purpose of producing or distributing steam, heat or power, or organized for the purpose of the production, distribution or sale of gas shall pay to the State treasurer, for the use of the State, an annual license fee or franchise tax at the rate of two-fifths of one per centum upon the gross amount of its receipts so returned or ascertained, and four per centum upon the dividends in excess of four per centum so paid or declared by any such corporation; that each oil or pipe line corporation shall pay to the State treasurer, for the use of the State, an annual license fee or franchise tax at the rate of three-fifths of one per centum upon the gross amount of its receipts so returned or ascertained; that each insurance company other than life shall pay to the State treas-

urer for the use of the State, an annual license fee or franchise tax at the rate of three-fourths of one per centum upon the gross amount of its premiums so returned or ascertained; that each life insurance company shall pay to the State treasurer, for the use of the State, an annual license fee or franchise tax of three-fourths of one per centum upon the amount of its surplus on the thirty-first day of December next preceding as fixed by section 5 of this act, and in addition thereto a further annual license fee or franchise tax of thirty-one hundreds of one per centum upon the total gross insurance premiums collected by such companies during the year ending the thirty-first of December next preceding. The insurance commissioner of this State shall ascertain and report to the secretary of State all facts necessary to enable the said secretary of State to ascertain and fix the amount of taxation to be paid by life insurance companies under this act, and shall also certify to each of said companies the amount of such taxation under this act; that each parlor, palace, or sleeping car corporation shall pay to the State treasurer, for the use of the State an annual license fee or franchise tax at the rate of one and one-half per centum upon the gross amount of its receipts so returned or ascertained; if any oil or pipe line corporation has part of its transportation line in this State and part thereof in another State or other States, such corporation shall return a statement of its gross receipts for transportation of oil or petroleum over its whole line, together with a statement of the whole length of its line, and the length of its line in this State; such corporation shall pay an annual license fee or franchise tax to the State treasurer, for the use of the State, at the aforesaid rate upon such proportion of its said gross receipts as the length of its line in this State bears to the whole length of its line; that all other corporations hereafter incorporated under the laws of this State, and not hereinbefore provided for shall make, on or before the first Tuesday of January next, and annually thereafter, return to the secretary of State of such information as may be required by him to carry out the provisions of this act, and shall pay an annual license fee or franchise tax of one-twentieth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-fortieth of one per centum and the further sum of thirty dollars per annum per one million dollars or any part thereof, on all amounts of capital stock, issued and outstanding in excess of five million dollars; provided, that this act shall not apply to railroad, railway,

Franchise tax; exemptions.

canal or banking corporations or to savings banks, cemeteries or religious corporations, or to purely charitable or educational associations or manufacturing or mining corporations, at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this State; if any manufacturing or mining company, carrying on business in this State, shall have less than fifty per centum of its capital stock issued and outstanding, invested in business carried on within this State such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this State, but shall be entitled in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.

**Certificate of secretary of State to treasurer.**

§ 5. That the secretary of State shall certify and report to the State treasurer, on or before the first Tuesday of February in each year, a statement of the basis of the annual license fee or franchise tax as returned by each corporation or company to or to be ascertained by the said secretary of State, and the amount of tax due thereon respectively, at the rate fixed by this act; such tax shall thereafter become due and payable and it shall be the duty of the State treasurer to receive the same; if the tax of any corporation or company remains unpaid on the first day of March after the same becomes due the same shall thenceforth bear interest at the rate of one per centum for each month until paid; the secretary of State shall have the power to require of any corporation or company subject to tax under this act such information or reports touching the affairs of such corporation or company as may be necessary to carry out the provisions of this act; and may require the production of the books of any such corporation or company, and may swear or affirm and examine witnesses in relation thereto.

**Tax as a debt.**

§ 6. That such tax when determined shall be a debt due from such corporation or company to the State, for which an action at law may be maintained after the same shall have been in arrears for the period of one month, such tax shall also be a preferred debt in case of insolvency.

**Collection of tax, remedies.**

§ 7. That in addition to other remedies for the collection of such tax it shall be lawful for the attorney-general, either of his own motion or upon request of the State treasurer, whenever any tax due under this act

from any corporation or company shall have remained in arrears for a period of three months after the same shall have become payable, to apply to the court of chancery, by petition in the name of the State, on five days' notice to such corporation or company, which notice may be served in such manner as the chancellor may direct for an injunction to restrain such corporation or company from the exercise of any franchise, or the transaction of any business within this State until the payment of such tax and interest due thereon and the cost of such application shall be fixed by the chancellor; the said court is hereby authorized to grant such injunction, if a proper case appears, and upon the granting and service of such injunction, it shall not be lawful for any such corporation or company thereafter to exercise any franchise or transact any business in this State until such injunction shall be dissolved.

**Exemptions.**

§ 8. That this act shall not apply to or in any manner affect the tax upon the premiums obtained in this State by foreign fire insurance companies and their agents, which tax shall be in lieu of the tax herein provided and shall be collected and distributed as is specially provided by law in relation thereto.

**Retaliatory taxation.**

§ 9. When, by the laws of any other State or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this State, doing business in such other State or nation, or upon their agents therein, than the laws of this State impose upon their corporations or agents doing business in this State, so long as such laws continue in force in such foreign State or nation, the same taxes, fines, penalties, licenses, fees, obligations and requirements, of whatever kind shall be imposed upon all corporations of such other State or nation doing business within this State and upon their agents here; provided, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other States or nations transacting business in the State.

**Failure to pay taxes, charter void.**

§ 10. If any corporation hereafter created shall for two consecutive years neglect or refuse to pay the State any tax which has been or shall be assessed against it, or which it is required to pay, under any law of this State and made payable into the State treasury, the charter of such corporation shall be void, and all powers conferred by law upon such corporation are hereby de-

## Franchise tax; collection.

clared inoperative and void, unless the governor shall, for good cause shown to him, give further time for the payment of such taxes, in which case a certificate thereof shall be filed by the governor in the office of the State treasurer, stating the reasons therefor.

**Report of State treasurer to governor, of failure to pay tax, proclamation avoiding charter.**

§ 11. On or before the first Tuesday of January in each year the State treasurer shall report to the governor a list of all the corporations or companies which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them or due by them, under the law of this State, and the governor shall forthwith issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed.

§ 12. The proclamation of the governor shall be filed in the office of the secretary of State, and published in such newspapers and for such length of time as the governor shall designate.

**Penalty for acting under void charter.**

§ 13. Any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both, in the discretion of the court.

**Other remedies for collection of taxes.**

§ 14. After any corporation of this State hereafter incorporated has failed and neglected for the space of two consecutive years to pay the taxes imposed on it by law, and the State treasurer of this State shall have reported such corporation to the governor of this State, as provided in this act, then it shall be lawful for the attorney-general of this State to proceed against said corporation in the court of chancery of this State for the appointment of a receiver, or otherwise, and the said court in such proceedings shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the State of Delaware, and shall enter a final decree for the amount so ascertained, and thereupon a fieri facias or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on fieri facias shall be found within the said State of Delaware, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation

upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustees or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court; and if the said corporation shall neglect or refuse within ten days from and after the service of such notice of such decree to assign and transfer the same to such receiver or trustee for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under fieri facias of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings.

**Proclamation of governor correcting mistake.**

§ 15. Whenever it is established to the satisfaction of the governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the governor by the State treasurer as refusing or neglecting to pay the same as aforesaid, that the governor be and he is hereby authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the secretary of State.

**Restoration of charter.**

§ 16. If the charter of any corporation hereafter created, shall become inoperative or void by proclamation of the governor, or by operation of law, for non-payment of taxes the governor, by and with the advice of the attorney-general, may, at any time within two years thereafter, or after the default in the payment of such taxes, upon

## Decisions.

payment by said corporation to the secretary of State of such sum in lieu of taxes and penalties as to them may seem reasonable, but in no case to be less than the fees required as upon the filing of the original certificate of incorporation, permit such corporation to be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the secretary of State shall issue his certificate entitling such corporation to continue its said business and its said franchises.

Nothing in this section contained shall relieve said corporation from penalty of forfeiture of franchises in case of failure to pay future taxes imposed as in this act provided.

**Review of assessment.**

§ 17. The officers of any corporation who shall consider the taxes levied under the provisions of this act excessive or otherwise unjust, may make application to the governor for a review of the assessment and a readjustment of the tax; provided, there be filed with the governor within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken and the reasons why the tax is considered excessive or unjust; the governor shall thereupon proceed to investigate the contentions raised by the said petition of appeal; and for the purpose of such hearing, the officers of said corporation may be summoned to appear be-

fore the governor, either in person or by attorney, and questioned as to the statements set forth in the said petition of appeal; if, in the opinion of the governor it shall appear that the tax so levied as aforesaid is excessive or unjust, he shall thereupon require the officers of the corporation to file with him a corrected return, and upon said corrected return the assessment shall be adjusted and the tax reduced or amended as in the opinion of the governor shall seem proper.

If the petition of appeal shall not be filed within three months from the date of the assessment, as aforesaid, the right to appeal to the governor shall be considered and treated as having been waived and the amount of tax levied shall be payable and collectible at once.

§ 18. That the secretary of State shall receive for the services required of him under the provisions of this act the sum of five hundred dollars to be paid to him annually in addition to the salary and fees now provided by law.

**Exemptions.**

§ 19. That the provisions of this act shall not apply to corporations heretofore incorporated and the property of such corporations is hereby made exempt from taxation under the provisions of this act, such exemption, in the opinion of the general assembly, being best to promote the public welfare.  
(Approved March 10, 1899.)

**DECISIONS.**

(Include 44 Atl. Rep., to Oct. 4, 1899.)

**Existence of corporation.**

Where a bill in equity alleges that a gas-light company, which is not made a defendant, was not legally incorporated, and defendants, instead of answering, file a plea alleging that the company is a legal corporation and a necessary party, an issue as to its existence is raised. The right of a corporation *de facto* to exist cannot be inquired into collaterally, but only by quo warranto proceedings in the name of the State. Mayor, etc., of Wilmington v. Addicks, 43 Atl. Rep. 297.

The Oxy-Hydrogen Company of Delaware, a gas-light company, incorporated by act April 3, 1873, is "an incorporation for public improvement" within Const. 1831, art. 2, § 17, providing that no act of incorporation shall continue in force for a longer period

than twenty years, without re-enactment of the legislature, unless it be "an incorporation for public improvement," and as no limitation of time is expressed in the act creating it, its charter is a perpetual one, subject only to the constitutionally reserved power of the legislature to revoke it. *Id.*

**Election of directors; application to set aside.**

Notice must be served on the corporation, of an application to set aside its election of directors. Notice having been given, it is unnecessary to issue a rule to show cause why the prayer of the petition should not be granted; but the court may, on the return day of the application, fix a time for a hearing. *In re Vernon*, 40 Atl. Rep. 60.

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Decisions.

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Under Revised Code, p. 578, chap. 70, § 22 (Anno. Corp. Laws, Del., p. 19), providing that at an election of directors, no shares shall be voted which have been transferred to the holder within twenty days of the time of such election, an election at which four shares were voted, which were transferred to the voters on the day of election, is void. *Id.*

**Action to enforce liability of directors for illegal dividends.**

17 Laws, chap. 147, § 41, enabling a creditor of a corporation to maintain an

action on the case against directors when they shall be liable by the provisions of the act to pay the "debts" of the corporation, does not enable an individual creditor of an insolvent corporation to maintain an action on the case under section 7, making directors of insolvent corporations liable "to the creditors thereof" to the full amount of dividends withdrawn from the capital stock. *John A. Roebling's Sons Co. v. Mode*, 43 Atl. Rep. 480.

See Anno. Corp. L., Del., p. 19.







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FLORIDA.

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# FLORIDA.

[The session laws of Florida for 1899 are not published at the date of going to press, but the secretary of State informs us that no laws affecting corporations generally were passed.]

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## DECISIONS.

(Include 26 S. Rep. 696.)

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### **Receivers.**

It is error to appoint a receiver without notice to the parties concerned, unless upon sworn allegations in compliance with Cir. Ct. Rules Nos. 46, 47, showing that the injury apprehended will be done, if an imme-

diate remedy is not afforded. Jacksonville Ferry Co. v. Stockton (Sup. Ct., Fla.), 23 S. Rep. 557 (1898).

The allegation necessary to excuse notice of application for the appointment of a receiver must be positive. *Id.*







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## GEORGIA.

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# GEORGIA.

## CONSTITUTION OF GEORGIA—1877.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I, SECTION III.

##### Bill of Rights.

Par. 2. Laws impairing obligations of contracts, or making irrevocable grants or privileges prohibited.  
3. No grants or special privileges shall be revoked, except, etc.

#### ARTICLE III, SECTION VII.

##### Legislative Department.

Par. 18. General assembly shall not grant corporate powers, but shall prescribe manner in which courts shall grant them.  
20. Street railways shall not be constructed without consent of authorities.

#### ARTICLE IV, SECTION II.

##### Power of the General Assembly over Taxation.

Par. 1. General assembly may regulate railroad freights and tariffs.  
2. Right of eminent domain, or police powers of the State shall never be abridged.  
3. General assembly shall not remit forfeiture of charter of existing corporations except upon certain conditions.  
4. One corporation may not buy stock in another to lessen competition.  
5. Railroad company not to deceive public as to rates.  
6. No provision in this article shall be deemed to impair obligation of any contract.  
7. Provisions of this article shall be enforced.

#### ARTICLE VII, SECTION II.

##### Taxation.

Par. 5. Power to tax corporate property shall not be surrendered or suspended.

#### SECTION V.

Par. 1. State shall not become a stockholder in, or loan its credit to any corporation.

#### ARTICLE I, SECTION III.

Par. II. No bill of attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grants of special privileges or immunities, shall be passed.

See Const., art. I, par. 3; art. IV, par. 6; art. VII, par. 5; Code, § 1861.

[A private corporation is a contract between the government and corporators, and rights and privileges conferred by charter cannot be repealed or impaired by legislature without consent or default of corporation. *Young v. Harrisons*, 6 Ga. 130.

Where an act of incorporation is passed, making directors personally liable for certain acts, if committed, this charter is not a contract, but it is quasi ex contractu; and, upon commission of these acts, an action quasi ex contractu is raised. *Banks v. Darden*, 18 Ga. 318.

Original contract between stockholders and corporation, as contained in charter, cannot be materially altered by an amended charter, without consent of stockholders. *May v. Railroad Co.*, 48 Ga. 109.]

Par. III. No grant of special privileges or immunities shall be revoked, except in such manner as to work no injustice to the corporators or creditors of the incorporation.

See §§ 1861 et seq.

[A private corporation cannot be deprived of its franchise except by judicial judgment upon a quo warranto. *State v. Mayor*, 5 Ga. 250.]

#### ARTICLE III, SECTION VII.

Par. XVIII. The general assembly shall have no power to grant corporate powers and privileges to private companies, except banking, insurance, railroad, canal, navigation, express and telegraph companies; \* \* \* but it shall prescribe by law the manner in which such powers shall be exercised by the courts.

See §§ 1835, 2349.

[An unconstitutional act, although void as a law, may operate as notice, not only to the corporation who accept of it, but the third persons who act upon it. *Robinson v. Bank*, 18 Ga. 65.]

Par. XX. The general assembly shall not authorize the construction of any street passenger railway within the limits of any incorporated town or city, without the consent of the corporate authorities.

#### ARTICLE IV, SECTION II.

Par. I. The power and authority of regulating railroad freights and passenger tariffs, preventing unjust discriminations, and requiring reasonable and just rates of freight

Eminent domain; forfeiture, etc.—Const., Art. iv, § 2; Art. vii, §§ 2, 5.

and passenger tariffs, are hereby conferred upon the general assembly, whose duty it shall be to pass laws, from time to time, to regulate freight and passenger tariffs, to prohibit unjust discriminations on the various railroads of this State, and to prohibit said roads from charging other than just and reasonable rates, and enforce the same by adequate penalties.

Par. II. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the State.

Par. III. The general assembly shall not remit the forfeiture of the charter of any corporation, now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of said corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution; and every amendment of any charter of any corporation in this State, or any special law for its benefit, accepted thereby, shall operate as a novation of said charter and shall bring the same under the provisions of this Constitution: Provided, That this section shall not extend to any amendment for the purpose of allowing any existing road to take stock in or aid in the building of any branch road.

See § 1861.

Par. IV. The general assembly of this State shall have no power to authorize any

corporation to buy shares, or stock, in any other corporation in this State, or elsewhere, or to make any contract, or agreement whatever, with any such corporation, which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses, or to encourage monopoly; and all such contracts and agreements shall be illegal and void.

Par. V. No railroad company shall give, or pay, any rebate, or bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.

Par. VI. No provision of this article shall be deemed, held, or taken to impair the obligation of any contract heretofore made by the State of Georgia.

See Const., art. I, paragraphs 2, 3.

Par. VII. The general assembly shall enforce the provisions of this article by appropriate legislation.

#### ARTICLE VII, SECTION II.

Par. V. The power to tax corporations and corporate property, shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

Taxation of corporations, see §§ 767 et seq.

#### SECTION V.

Par. I. The credit of the State shall not be pledged or loaned to any individual, company, corporation or association, and the State shall not become a joint owner or stockholder in any company, association or corporation.

## THE CODE OF GEORGIA—1895.

**The Political Code.****TITLE VIII. PUBLIC REVENUE.****Sec. 767. Taxable property.**

769. Non-resident owners of property liable.  
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 876. Penalty where there is no special provision.  
 880. Executions issued against corporations, how directed.  
 881. Executions against agents, etc.

**Taxable property.**

§ 767. All real and personal estate, whether owned by individuals or corporations, resident or non-resident, is liable to taxation. (Code 1882, § 799.)

[What is capital stock liable to taxation. *Hightower v. Thornton*, 8 Ga. 486. Tax to be paid on whole amount of capital stock paid in, and not on market value thereof. *Wilson v. Factory*, 44 Ga. 388.]

**Non-resident owners of property liable.**

§ 769. Lands or other property belonging to citizens of the United States, not resident of this State, cannot be taxed higher than the property of residents, but all the property of such non-residents, whether their property be real or personal, in this State, must pay taxes on the same herein. (Code 1882, § 803.)

**Bonds, notes, etc., of non-residents; bonds of other States.**

§ 776. Bonds, notes, or other obligations for money, on persons in other States, or of other States, or bonds of corporations of other States, and shipping, are the subjects of return and taxation in this State. (Code 1882, § 801.)

**Ungranted lands, and stock corporations.**

§ 777. All lands held under warrants and certificates, but not granted, are liable to taxation, and all moneyed or stock corporations, are liable to taxation. (Code 1882, § 802.)

**Returns and taxes, etc.**

§ 805. The returns of all railroad and insurance and express companies, and agents of foreign companies, authorized in this State, shall be made to the comptroller-general by the first day of May in each year, and the taxes thereof paid to the State treasurer by the first day of October, and not later than December twentieth, of each year. (Code 1882, § 826.)

**Differences arbitrated, how.**

§ 807. Whenever the comptroller-general shall be satisfied with a return for taxation required by law to be made to him by any corporation, company, person, or institution, and shall make an assessment which is not satisfactory to the officer or person making such return, and two arbitrators are chosen, one by the comptroller-general and the other by said officer or person, if said arbitrators fail to select an umpire within thirty days after receiving notice of their appointment, the governor shall appoint two arbitrators, who with the arbitrator selected by said officer or person representing the corporation, company or institution, shall determine the question of amount or value, as the case may be, and their award shall be final. (Code 1882, § 833a.)

**Returns to comptroller must be itemized.**

§ 812. Whenever corporations, companies, persons, agencies, or institutions, are required by law to make returns of property, or gross receipts, or business, or income, gross, annual, net, or any other kind, or any other return, to the comptroller-general, for taxation, such return shall contain an itemized statement of property, each class or species to be separately named and valued, or an itemized account of gross receipts, or business, or income, as above defined, or other matters required to be returned, and in case of net income only, an itemized account of gross receipts and expenditures, to show how the income returned is ascertained, and such returns shall be carefully scrutinized by the comptroller-general, and if in his judgment the property embraced therein is returned below its value, he shall assess the value, within sixty days thereafter, from any information he can obtain, and if he shall find a return of gross receipts, or business, or income, as above defined, or other matters required to be returned as aforesaid, below the true amount, or false in any particular, or in anywise contrary to law, he shall correct the same and assess the true amount,

## Taxation — Code, §§ 813–815, 826–827, 875–881.

from the best information at his command, within sixty days. In all cases of assessment, or of correction of returns, as herein provided, the officer or person making such returns shall receive notice and shall have the privilege, within twenty days after such notice, to refer the question of true value or amount, as the case may be, to arbitrators — one chosen by himself, and one chosen by the comptroller-general — with power to choose an umpire in case of disagreement, and their award shall be final. (Code of 1882, § 826d.)

**When no return, comptroller to assess.**

§ 813. In cases of failure to make return, the comptroller-general shall make an assessment from the best information he can procure, which assessment shall be conclusive upon said corporations, companies, persons, agencies, or institutions. (Code 1882, § 826e.)

**Collection of tax, how enforced.**

§ 814. In all cases of default in payment of taxes upon returns or assessments, the comptroller-general shall enforce collections in the manner now provided by law. (Code 1882, § 826f.)

**Usual penalties still in force.**

§ 815. Nothing in the three preceding sections shall alter or affect the penalties now provided by law against defaulting or delinquent corporations, companies, persons, or institutions referred to therein, or to alter or affect the mode of enforcement of such penalties now provided by law. (Code 1882, § 826g.)

**Returns, to whom made.**

§ 826. All other companies or persons taxed shall make their returns to the receiver of the respective counties where the persons reside or the office of the company is located, except in cases of mining companies and of persons who cultivate lands in counties not their residence. (Code 1882, § 827.)

**Other returns, how made.**

§ 827. Returns of companies and individuals may be made by themselves or agents to the proper tax receiver, by the first day of July in each year, for property held and subject to taxation on the first day of April previously; and payments to the tax collector by the first day of October and not later than the twentieth day of December in each year. (Code 1882, § 834.)

**Defaulting companies.**

§ 874. If any corporation, company, person, agency, or institution, who are required to make their returns to the comptroller-general, shall fail to return the taxable property or specifics, or pay annually the taxes for which they are liable to the State treasury, the comptroller-general shall issue

against them an execution for the amount of taxes due, according to law, together with the costs and penalties. (Code 1882, § 876.)

**Forfeiture of charter of delinquent corporations.**

§ 875. The penalty against all such corporations shall be the forfeiture of their charters, and if not chartered by this State, then the immediate suspension of their business therein. (Code 1882, § 877.)

**Penalty, where there is no special provision.**

§ 876. The penalty or default tax on banks, railroads, and other corporations, where there is no special provision, shall be three times the amount of their lawful tax. (Code 1882, § 878.)

**Executions issued against corporations, how directed.**

§ 880. The executions issued by the comptroller-general against any company shall be directed to all and singular the sheriffs and other lawful officers of this State, with directions to levy the same on the property of the corporation or company, with power to issue and serve garnishments upon the debtors of the corporation. (Code 1882, § 882.)

**Executions against agents, etc.**

§ 881. The executions against agents of foreign institutions as aforesaid shall be against the principal agent or his successor, and shall authorize the officer to levy on all the property of the agency, to seize its money, notes, or other effects. (Code 1882, § 883.)

**The Civil Code.****TITLE II. CORPORATIONS.**

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- 1832. Public or private.
- 1833. Public.
- 1834. Private.
- 1835. By whom created.
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- 1837. Form of certificate to be issued.
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### ARTICLE VIII. CORPORATIONS CREATED BY SUPERIOR COURT.

**Sec. 2349.** Special terms to grant charters.

2349a. Confirmation of charters.

2350. Superior courts may create what corporations.

### Corporation defined.

§ 1831. A corporation is an artificial person created by law for specific purposes, the limit of whose existence, powers and liabilities is fixed by the act of incorporation, usually called its charter. (Code 1882, § 1670.)

[Corporation defined. *Frederick v. Council*, 5 Ga. 561. Possesses only those properties conferred by charter, either expressly or as incidental to its very existence. *Id.* Is embraced in a statute under designation of "person," unless expressly excepted or excluded by necessary implication. *Railroad v. Paulk*, 24 Ga. 356. Is not a "citizen." *Manganese Co. v. Ward*, 73 Ga. 401.

Entity not affected by entire change of personnel of officers and members. *Mathis v. Morgan*, 72 Ga. 517. Not a "person" in law until after grant of its charter. *Bartram v. Mfg. Co.*, 69 Ga. 751.]

### Public or private.

§ 1832. Corporations are either public or private. (Code 1882, § 1671.)

### Public.

§ 1833. A public corporation is one having for its object the administration of a portion of the powers of government, delegated to it for that purpose—such are municipal corporations. (Code 1882, § 1672.)

### Private.

§ 1834. All others are private, whether the object of incorporation be for public convenience or individual profit, and whether the purpose be, in its nature, civil, religious or educational. (Code 1882, § 1673.)

[See *R. & B. Co. v. State*, 54 Ga. 404.]

### By whom created.

§ 1835. The power to create corporations in this State vests in the general assembly, and the courts, by whom all charters must be granted. (Code 1882, § 1674.)

See Const., art. III, par. 18, §§ 2349 et seq.

[Grants of exclusive privileges to corporations are to be strictly construed, and if terms of grant are ambiguous, ambiguity must operate in favor of public. *McLeod v. Burroughs*, 9 Ga. 213; *R. R. Co. v. R. R. Co.*, 49 Ga. 151; *R. R. Co. v. Smith*, 70 Ga. 694.

Corporations chartered in two States may for some purposes be recorded as one entire entity. *R. R. Co. v. Hammond*, 58 Ga. 523.

General assembly cannot constitutionally incorporate three corporations by one law. *King v. Banks*, 61 Ga. 20.

Consolidation illegal, not consummated; notes given in lieu of delivered stock in consolidated company, not collectible. *Tompkins v. Compton*, 93 Ga. 520; s. c., 21 S. E. Rep. 79.

Charter fundamentally changed by legislature without consent of previous subscribers of stock, releases it. *Academy v. Flanders*, 75 Ga. 15; *Snook v. Imp. Co.*, 83 Ga. 62; s. c., 9 S. E. Rep. 1104. Whether change is fundamental is for decision by court. *Id.* Railroad terminus changed, is fundamental. *Id.*

Amendment, if repugnant to original charter, repeals the charter if accepted. *R. R. Co. v. Goldsmith*, 62 Ga. 463.

Not competent for general assembly to enact law creating three separate and distinct corporations, or reviving by name three charters which had become obsolete. *Ex parte Conner*, 51 Ga. 571; *King v. Banks*, 61 Id. 20; *Howell v. State*, 71 Id. 229.

Charter of private corporation is a contract between State and corporation; and terms of such contract are to be looked for in body of

## Renewals; certificate; amendment — Code, §§ 1836-1841.

Instrument, not in title or caption. Goldsmith v. R. R. Co., 62 Ga. 473; Same v. Same, id. 485.

Charter of bank is a public law, and courts will take judicial cognizance thereof. Terry v. Bank, 68 Ga. 177.

Charter passed by legislature is a public law. Gunn v. R. R. Co., 74 Ga. 509. Legislative power to create corporation. Bridge Co. v. Wood, 14 Ga. 80.]

## Charters, how renewed.

§ 1836. Any banking, insurance, railroad, canal, navigation, express and telegraph companies, heretofore incorporated by the general assembly, by special act may from time to time renew its charter by filing with the secretary of State a petition signed with the corporate name, stating the name and charter of the corporation, when incorporated, giving the date of the original act of incorporation and all amendments thereto, that it desires a renewal of its charter as set out in the original act of incorporation and the acts amendatory thereof, and paying to the secretary of State a fee of one hundred dollars, to be covered by him into the treasury of the State, and filing along with said petition a certified abstract from the minutes of the corporation, showing that the application for renewal had been authorized by proper corporate action. (Act of 1893, December 20.)

## Form of certificate to be issued.

§ 1837. Thereupon the secretary of State shall issue to the petitioning corporation the following certificate, to wit: "Georgia. To whom it may concern, greeting: (insert name of petitioning corporation), a corporation created by an act of the general assembly of the State of Georgia, by an act approved (insert date of approval of act of incorporation), and acts amendatory thereof, approved (insert date of approval of amending acts), having petitioned for a renewal of the charter of said corporation in terms of the statute in such case made and provided, the grant of corporate powers and privileges set out in the above recited acts is hereby renewed for the space of thirty years, as to all parts thereof not in conflict with the Constitution and laws now or hereafter of force in this State. Witness my official hand and the seal of State, this ..... day of ....., 18...". (Act of 1893, December 20.)

## Acceptance of renewal.

§ 1838. Upon filing the petition and abstract, and the issuance of the certificate prescribed, the corporation shall be conclusively presumed to have accepted the renewal of its charter, and said corporation shall be, and continue for the space of thirty years, a body corporate, with all the powers, privileges and liabilities granted in the original act of incorporation and the amendments thereto, so far as the same are not in conflict with the Constitution and

laws of the State, now or hereafter of force. (Act of 1893, December 20.)

## To file petition, etc.

§ 1839. The secretary of State shall keep on file the petition and abstracts specified, and a book in which he shall enter the names of all corporations obtaining renewals of charters, and the date of the renewal. (Act of 1893, December 20.)

## Charters, how amended.

§ 1840. Any banking, insurance, railroad, canal, navigation, express or telegraph company, heretofore incorporated by the general assembly by special act, may amend its charter so as to acquire any or all of the corporate powers and privileges granted to a like corporation under the acts already or to be hereafter passed, providing for the grant of corporate powers and privileges to such companies by the secretary of State, by filing with the secretary of State a petition, signed with the corporate name, stating the name and character of the corporation, the date of the original act of incorporation and all amendments thereto, that it desires an amendment to its charter by having granted it the corporate powers and privileges granted to similar corporations by the act, or certain specified sections of the act, providing for the grant of corporate powers and privileges to (insert kind of company) by the secretary of State, and paying to the secretary of State a fee of twenty-five dollars, to be covered by him into the treasury of the State, and also filing along with said petition a certified abstract from the minutes of the corporation, showing that the application for amendment had been authorized by proper corporate action. (Act of 1893, December 20.)

## Certificate of amendment.

§ 1841. Thereupon the secretary of State shall issue to the corporation the following certificate: "Georgia. To whom it may concern, greeting: (insert here name of petitioning corporation), a corporation created by an act of the general assembly of this State by an act approved (insert here date of approval of act), and acts amendatory thereof, approved (insert here date of approval of amending acts), having petitioned for an amendment of the charter of said corporation, in terms of the law in such case made and provided, the corporate powers and privileges set out in the act (or certain specified sections of the act,) providing for the grant of corporate powers and privileges by the secretary to (insert charter of company), are hereby conferred upon (insert name of company desiring amendment). Witness my hand and the seal of this State, this ..... day of ....., 18...". (Act of 1893, December 20.)

## Amendment; name; foreign — Code, §§ 1842-1846.

**Acceptance of amendment conclusively presumed.**

§ 1842. After the filing of said petition, and the issuance of the certificate prescribed in the foregoing section, the corporation shall be conclusively presumed to have accepted the amendment specified, and shall have, enjoy and-exercise all the corporate powers and privileges set out in the act, or the particular section of the act specified in the petition, and certificate prescribed in section 1840 of this code. (Act of 1893, December 20.)

**Petitions and transcripts to be kept on file.**

§ 1843. The secretary shall keep of file all petitions and transcripts filed with him, and a book in which he shall enter the names of all the companies obtaining the amendments to charters, the date of the amendment and the act, or portions of the act, adopted as an amendment. (Act of 1893, December 20.)

**Change of name or place of business.**

§ 1844. Any banking, railroad, insurance, express, telegraph, canal, or navigation company in this State, whether incorporated by special act of the general assembly or by the secretary of State under the general law, may have its corporate name or its principal office changed in the following manner, to wit: The company desiring to have its name or its principal office changed, shall file in the office of the secretary of State a petition, signed with the corporate name, stating the name and character of the corporation, the date of its original charter and all amendments thereto, that it desires an amendment to its charter changing its corporate name or its principal office, or both, as the case may be; and pay to the secretary of State a fee of twenty-five dollars, to be covered by him into the treasury of the State; and also file with such petition a certified abstract from the minutes of the board of directors, showing that the application for the proposed amendment has been authorized by the unanimous vote of the stockholders present at a stockholders' meeting. Affidavit, made and signed in due form of law by the president or secretary, shall be attached to said petition, showing that it has been published once a week for four weeks in that newspaper in which is published the sheriff's sales of the county in which the principal office of said corporation is located. (L. 1895, p. 52.)

**Certificate of change.**

§ 1845. When said petition and affidavit have been filed in the office of the secretary of State, that officer shall issue to said company, under the great seal of the State, a certificate in the following form:

To all to whom these presents may come — Greeting:

Whereas, The (here insert name of petitioning corporation), a corporation created and existing under the laws of this State, has filed in this office, in terms of the law, a petition asking that its charter be amended, by changing (its corporate name or its principal office, or both, as the case may be) from ..... to ..... and has complied with all the requirements of the law in such cases made and provided; therefore, the State of Georgia hereby amends the charter of the said (insert name of company) by changing (its corporate name or principal office, or both, as the case may be), from (insert old name or old principal office, or both) to (insert new name or new principal office, or both).

In witness whereof, these presents have been signed by the secretary of State, and the great seal has been attached hereto, at the capitol, in Atlanta, on this ..... day of ..... 18.... (L. 1895, p. 52.)

**Foreign corporations.**

§ 1846. Corporations created by other States or foreign governments, are recognized in our courts only by comity, and so long as the same comity is extended in their courts to corporations created by this State. (Code 1882, § 1675.)

[A corporation can have no legal existence out of the sovereignty by which it is created; but its existence may be recognized in another State, and it may there be contracted with. U. B. R. R. Co. v. E. T. & G. R. R. Co., 14 Ga. 327. Right to sue controlled by comity. Society v. Gattrell, 23 Ga. 448.

Attachment will lie against a foreign corporation, even though it be not doing business here. Wilson v. Danforth, 47 Ga. 676.

Although corporations, as such, can do no corporate act out of limits of State granting its charter, yet its agents and officers may bind it by contracts and engagements made in other States, and minutes of board of directors may be used as evidence, though the meetings appear to have been held out of State chartering the corporation. Mining Co. v. King, 45 Ga. 34.

Foreign corporation transacting business in this State may be garnished for a debt which may be owed anywhere in this State where suit for such a debt could be brought. R. R. Co. v. Tyson, 48 Ga. 351.

Foreign corporation becoming indebted under contracts made in Georgia, is liable to suit upon such contracts in this State, though at time of institution no business was being done by company, it having no place of business in the State of its incorporation. Bank v. Mfg. Co., 55 Ga. 36.

Courts of this State have no jurisdiction of suit in personam against foreign corporation, unless contract was made in Georgia, or Georgia agent was connected therewith. Remedy is by attachment. Bawknigh v. Ins. Co., 55 Ga. 194.

Counsel for foreign corporation not competent to verify amendments to exceptions, when. Ins. Co. v. Gray, 61 Ga. 515.

Subscriber to stock of foreign corporation, whose subscription was induced by fraudulent representations, may repudiate contract, and proceed by attachment as for money had and received. Ins. Co. v. Turner, 61 Ga. 561.

Affidavit for attachment need not disclose that defendant is a corporation. Residence beyond

## Powers; foreign; continuance — Code, §§ 1847–1851.

this State implies that debtor is not a domestic corporation. *R. R. Co. v. Plant*, 58 Ga. 167.

A Georgia court has no jurisdiction to dissolve a foreign corporation. *Dodge v. Manganese Co.*, 69 Ga. 665.

Foreign company buying domestic railroad, becomes domestic corporation, when. *Angier v. R. R. Co.*, 74 Ga. 634.

Foreign corporation subject to attachment in this State. *R. R. Co. v. Sav. Inst.*, 64 Ga. 18. Provision making it liable to suit, cumulative. *Id.*

Suit in personam cannot be maintained against a foreign corporation on contract made out of the State. Remedy is in rem, by attachment or garnishment. *Bawknigh v. Ins. Co.*, 55 Ga. 194; *Min. Co. v. Purdy*, 65 *Id.* 499. Mechanics' lien against, enforced here. *Id.*

Foreign railroad company with principal office in Fulton county, by statute, suable for injury in other county. *Williams v. Ry. Co.*, 90 Ga. 519.

Court of Georgia has no jurisdiction over non-resident foreign corporation; a resident agent to audit and pay claims does not alter case. *Schmidlapp v. Ins. Co.*, 71 Ga. 246.

Judgment construing charter in State of creation, followed here. *Clark v. Turner*, 73 Ga. 1.

One giving a deed to a foreign corporation under a power of sale to secure a loan, held estopped to deny the right of the corporation to exercise the power. *Ray v. Home, etc., Co.*, 98 Ga. 122; 26 S. E. Rep. 734.

A foreign corporation cannot maintain in a court of this State an action against another foreign corporation, begun by suing out an attachment which was never levied on any property of the defendant, and which plaintiff had only sought to make effectual by causing a summons of garnishment to be served upon a person who was the agent of a third corporation indebted to defendant. *Associated Press v. United Press*, 104 Ga. 51; 29 S. E. Rep. 869 (1888).]

## What powers they may not exercise.

§ 1847. No foreign corporation shall exercise within this State any corporate powers or privileges which by the Constitution or laws of Georgia are denied or prohibited to corporations created by this State, or the exercise of which is contrary to the public policy of this State, anything in the charter or corporate powers of the foreign corporation to the contrary notwithstanding. (Code 1882, § 1675, as amended by Act of 1893, December 9.)

## Penalty.

§ 1848. Whenever any foreign corporation shall exercise or attempt to exercise within this State any corporate power or privilege denied or prohibited to corporations created by this State, by the Constitution or laws of this State, or contrary to the public policy of this State, it shall be the duty of the courts to declare said corporate powers or privileges invalid and of no force or effect within this State, and to restrain or prohibit by appropriate process, order or judgment, the exercise of said corporate powers or privileges by said foreign corporation at the instance of any party at interest, or at the instance of the attorney-general, when the latter shall be directed by the governor to proceed to that end in the name of the State. (*Id.*)

## Ownership of land by foreign corporation.

§ 1849. Any foreign corporation or corporations incorporated by the laws of any other

State, and claiming to own lands in Georgia in quantity amounting to as much as five thousand acres, shall be incorporated by the laws of Georgia within twelve months after February twenty-eighth, eighteen hundred and seventy-seven, and on their failing to do so, the State of Georgia will not consent to the said corporation owning the said lands so located in her territory, and any foreign corporation incorporated by the laws of other States, who shall claim to own lands in the State of Georgia in quantity amounting to five thousand acres or upwards, shall become incorporated by the laws of the State of Georgia, and in default thereof, Georgia will not consent that said foreign corporation shall own said lands in her territory; and no foreign corporation incorporated by the laws of another State shall own more than five thousand acres of land except upon the condition of becoming a corporation under the laws of Georgia; Provided, That this section shall not apply to any foreign corporation, or any corporation incorporated by the laws of any other State engaged in the business of lending money on real estate security, nor to any such corporation which holding a lien upon real estate to secure the payment of any debt, when said corporation, in order to prevent loss, is compelled to become the purchaser of lands covered by deed or mortgage to secure a loan: And provided, however, That the benefits and privileges of the foregoing proviso shall not apply to any foreign corporation which does or may lend money in this State at a greater rate of interest than eight per cent. per annum. In estimating the amount of interest charged, there shall be included any and all commissions or fees which may be paid to said company or its duly authorized agents. (Act 1893, p. 33, as amended by Act 1895, p. 24.)

[On bill by foreign corporation to recover real estate, charter of such foreign corporation must show right to hold. *Cotton Gin Co. v. Barrett*, 66 Ga. 526.]

State alone can make the question as to right of such corporation to hold said land. *Mortg. Co. v. Tennille*, 87 Ga. 28; s. c., 13 S. E. Rep. 158.]

## Charter of foreign corporations, how far binding here.

§ 1850. Where a foreign corporation does business in this State and relies upon provisions in its charter different from those imposed by the law of this State under similar circumstances, it must show that the opposite party had notice of such provisions at the time the contract was made. (New.)

See 41 Ga. 660.

## Continuance.

§ 1851. Corporations have continuous succession during the time limited by their charter, notwithstanding the death of their

## Common powers — Code, § 1852.

members. Should any charter granted in future by the general assembly to a private corporation be silent as to its continuance, such charter shall expire at the end of thirty years from the date of its grant. (Code 1882, § 1678.)

## Renewal of charter. § 1836.

[Death of all members works a dissolution. § 1687. See R. R. Co. v. R. R. Co., 49 Ga. 151. Section cited. R. & B. Co. v. State, 54 Ga. 404.]

## Common powers.

§ 1852. All corporations have the right (1) to sue and be sued.

See §§ 1892 et seq. Stockholder may defend. § 1896. Service of process. § 1899ff.

[Clause in Constitution requiring all civil cases to be tried in county where defendant resides applies to corporations as well as natural persons. Bank v. Gibson, 11 Ga. 453.

The legal and equitable rights of a corporation are to be measured by same standard in rendition of verdicts of juries as those of natural persons. Green v. So. Ex. Co., 41 Ga. 515.

Corporations liable for libelous publication. Mach. Co. v. Souder, 58 Ga. 64. Acts of agent which will charge corporation therewith. Id.

In action on contract, corporation need not set out how or by what authority it was incorporated nor aver itself to be a corporation. Wilson v. Mach. Co., 55 Ga. 672.

Stockholders, unless authorized by statute, are not allowed to plead and defend for corporation when suit is against it, and they are not parties on the record. Blackman v. R. & B. Co., 58 Ga. 189.

Name of corporation is of its very essence, and a change of name in the fl. fa. from that by which it is sued, and judgment entered is a material variance. Bradford v. W. L. Co., 58 Ga. 280.

Effect of change of name by act of legislature upon pending suit by the corporation. W. L. Co. v. Bank, 53 Ga. 30.

That plaintiff corporation owns majority of stock in defendant corporation does not affect rights nor preclude defense. Bradford v. W. L. Co., 58 Ga. 280.

Stockholders cannot maintain bill for protection of corporate property, without alleging refusal of corporation to act in corporate name. Ware v. Bazemore, 58 Ga. 316.

Court of chancery has no authority to compel domestic corporation to go into foreign State and specifically contract. R. R. Co. v. Hammond, 58 Ga. 523.

Son of stockholder incompetent as juror in case of which corporation is party. R. R. Co. v. Hart, 60 Ga. 550.

Books of corporation produced on notice and read in part, how far evidence. Fischer v. R. R. Co., 34 Ga. 536.

Books including stock ledger admissible in suit between company and stockholder. R. R. Co. v. Vason, 57 Ga. 314.

Minutes of corporation touching contract, admissible in evidence, when. Brower v. E. Rome Co., 84 Ga. 219; s. c., 10 S. E. Rep. 629.

Misnomer in name of corporator immaterial, when. Imboden v. Min. Co., 70 Ga. 88.

Where corporation is sued by part of its name only, error may be corrected by amendment. Johnson v. R. R. Co., 74 Ga. 397; R. R. Co. v. Sullivan, 14 id. 277; R. R. Co. v. Rodgers, 66 id. 251.

Where name of plaintiff imports a corporation, but it is not alleged that plaintiff is so, a judgment is not void for mere want of such allegation. Academy v. Hardin, 78 Ga. 29. Whether the name so imports, is for judicial determination. Rules for deciding. Id.

Court will take judicial notice of names of all companies chartered by legislature. Jackson v. State, 72 Ga. 28.

Too late, after verdict, to take exception on ground that declaration did not allege that defendant was a corporation. Cribb v. Lumber Co., 82 Ga. 597; s. c., 9 S. E. Rep. 426.

Criminal negligence, corporation not guilty of, when. Allen v. Factory, 82 Ga. 76; s. c., 8 S. E. Rep. 68.

Subsequent creditors cannot sue for property lost by fraud, where corporation has waived or omitted to sue. Morgan v. Brower, 77 Ga. 635.

If property be damaged by illegal acts of corporation, president cannot mitigate damages by offer to buy property. Mayor v. Harris, 75 Ga. 762.

Possessory warrant to obtain corporate property, requisites of affidavit. McEvoy v. Hussey, 64 Ga. 314.

Where a corporator has a clear legal right, which has been violated by the corporation, and he has no other adequate legal remedy, he is entitled to relief by mandamus. Waring v. Med. Soc., 38 Ga. 608.

No funds, and unprofitableness of franchise, no reason against mandamus. Canal Co. v. Shuman, 91 Ga. 400; s. c., 17 S. E. Rep. 937.

Plea of null tie! corporation will not lie, when. Nutting v. Hill, 71 Ga. 557.

Transactions between corporators, throwing light on work of corporation, admissible in evidence. Imboden v. Min. Co., 70 Ga. 87.

A contract made with a number of individuals for a business thereafter to be conducted by a corporation, for which they agree to obtain a charter, is enforceable against the corporation, when formed, and not against the individuals. Chicago Bldg. & Mfg. Co. v. Talbotton Creamery Co., Sup. Ct. Ga.; 31 S. E. Rep. 809 (1898).

Minority stockholders may have relief in equity for fraud, conspiracy or acts ultra vires, but right to relief may be forfeited through laches. Alexander v. Searcy, 81 Ga. 536; s. c., 8 S. E. Rep. 630.

Where mortgage made by officers of corporation has been foreclosed, individual stockholder cannot interfere by injunction to restrain levy and sale under mortgage without showing sufficient reason why corporation itself is not party complainant. Henry v. Elder, 63 Ga. 347.

Injunction at instance of minority, to restrain policy of majority, not granted, when. Lamar v. House, 76 Ga. 640.

Mandamus will not lie to compel officers of bank to transfer stock from the vendor to a purchaser, except under judicial sale. Bank v. Harrison, 66 Ga. 696.

Sole shareholder may be indicted individually for injury to property by the corporation. Castleberry v. State, 62 Ga. 442.

If scrip representing stock be stolen, name of one forged, and stock sold and transferred on books, a bill will lie to compel issue of new stock and granting of dividends by company, or in default thereof, to compel purchasers to replace stock. Blaisdell v. Bohr, 68 Ga. 56.

Use and exercise of rights and privileges acquired or usurped from another corporation subjects user to its burden, including suit that could be maintained against it. R. R. Co. v. Fulghum, 87 Ga. 263; s. c., 13 S. E. Rep. 649.

Expiration of corporation not prevented by special law as to pending litigation only. Logan v. R. R. Co., 87 Ga. 533; s. c., 13 S. E. Rep. 516.

Dissolved corporation cannot prosecute pending suit, when. Van Felt v. B. & L. Assn., 87 Ga. 370; s. c., 13 S. E. Rep. 574.

A conversion of property belonging to the corporation gives a stockholder no right to sue therefor in his own name. Steele Co. v. Laurens, 24 S. E. Rep. 755.

A stockholder in a corporation cannot maintain an action against the directors for official misconduct, whereby the income of the corporation is decreased, without making other interested stockholders parties to the action. Bethune v. Wells, 94 Ga. 486; 21 S. E. Rep. 230; McAfee v. Zettler, Sup. Ct. Ga.; 30 S. E. Rep. 268 (1898).

## Powers; rights of corporators — Code, §§ 1852–1854.

A corporation is a necessary party to an action by a stockholder against the directors for misconduct in office. *Id.*

A trading corporation held liable as accommodation endorser on a note in the hands of a bona fide purchaser. *Jacobs Pharmacy Co. v. Southern E. & T. Co.*, 97 Ga. 573; 25 S. E. Rep. 171.

A corporation held not liable in garnishment to one of its salaried officers, where at no time, on striking a balance, there would have been anything due to the officers. *Bank v. Light & Water Co.*, 100 Ga. 92; 26 S. E. Rep. 473.]

(2.) To have and use a common seal.

(3.) To make by-laws, binding on their own members, not inconsistent with the laws of this State and of the United States.

May create lien on shares. § 2825.

[Corporation can exercise no power over corporators, beyond those conferred by charter, except on condition of their agreement and consent. *Winter v. R. R. Co.*, 11 Ga. 438. When neither charter nor any general statute imposed on stockholders of a corporation a liability to pay its debts, such liability cannot be imposed by a by-law. *Reid v. Mfg. Co.*, 40 Ga. 98. If individual members have represented to public that they were so liable, they are bound, not as subscribers, but as individuals. *Id.* Officers of corporation accepting and serving under known by-laws are to be understood as accepting such by-laws. *Mfg. Co. v. Brown*, 58 Ga. 240. And a by-law which creates a lien on stock, for debts due the corporation, is binding as between the corporators. *Tuttle v. Walton*, 1 Ga. 43. But a by-law which infringes a statute is void. *Haywood v. Mayor*, 12 Ga. 405.]

(4.) To receive donations by gift or will.

(5.) To purchase and hold such property, real or personal, as is necessary to the purpose of their organization.

[Mortgage by stockholders, officers interested, effect of. *Holst v. Burrus*, 79 Ga. 111; s. c., 4 S. E. Rep. 108.

Purchasing property or engaging in business outside of charter, is ultra vires. *Reynolds v. Simpson*, 74 Ga. 454. Alter, if to secure or collect debt in good faith. *Id.*

Stockholder under deed from company cannot set up a prescriptive title beyond what company might. *Moses v. Mfg. Co.*, 62 Ga. 455.]

(6.) And to do all such acts as are necessary for the legitimate execution of this purpose. (Code 1882, § 1679.)

May make assignment. § 2698.

[Directors, unless expressly restrained either by charter or by-laws, may exercise ordinary powers of a corporation. *Min. Co. v. King*, 45 Ga. 34.

Incidental powers of mining corporation. *Id.* Of corporation for manufacture of pig iron. *Iron Co. v. Jones*, 52 Ga. 56. Of lumber company. *Ellington v. Lumber Co.*, 93 Ga. 53; s. c., 19 S. E. Rep. 21.

Injunction asked by stockholders against action of company which they claimed to be ultra vires refused by chancellor. *Cozart v. R. & B. Co.*, 54 Ga. 379.

Allowing stockholders to pay up subscriptions before due in depreciating currency is ultra vires. *R. R. Co. v. Vason*, 57 Ga. 314.

Sawmill company, by express consent of stockholders and directors, when incidental and necessary to its business, may legally guarantee interest on railroad bonds. *Mercantile Co. v. Emp. Co.*, 91 Ga. 636; s. c., 18 S. E. Rep. 358.

A corporation cannot be a peddler. *Iron Co. v. Johnson*, 84 Ga. 754; s. c., 11 S. E. Rep. 233.

Railroad company to form partnership is ultra vires. *Gunn v. R. R. Co.*, 74 Ga. 509.

Powers of a corporation are limited by act of incorporation, and besides powers specially granted, it has those which are common to a corporations. Power to form partnership not on of those which is common to all. *Id.*

No corporation, whether private or public, can exercise any power not expressly conferred or necessarily implied to enable it to carry out the purpose for which it was created. This inseparable from the very definition of a corporation as given by section 1670. *Church v. City*, 76 Ga. 188; *Leverett v. Ry. Co.*, 96 id. 386 s. c., 24 S. E. Rep. 184.

Corporation has only the power conferred by its charter. *Singleton v. R. R. Co.*, 70 Ga. 464. And such powers are always to be strictly construed, and its obligations to be strictly performed, whether they may be due to State or to individuals. *Id.*

No remedy can be had for breach of contract which is ultra vires. *Hose Co. v. Philpot*, 53 Ga. 625.

Exclusive grants are to be strictly construed and will not be extended further than their terms require. *R. R. Co. v. Augusta*, 96 Ga. 565; s. c., 23 S. E. Rep. 501.

Ultra vires could not be pleaded against a bona fide purchaser, in defense of a note given by the corporation for property it had no authority to buy, though it offered to rescind the sale when the offer was not made on the grounds of ultra vires. *Towers v. Inman*, 96 Ga. 506; 23 S. E. Rep. 418.

Where a railroad company, incorporated under general act, accepts amendments to its charter by a special act, and afterward, without objection of its stockholders, contracts with respect to powers conferred by special act, both corporation and stockholders are bound by such contract whether special act be valid or not. *Johnson v. Trust Co.*, 94 Ga. 324; 21 S. E. Rep. 576.

Evidence examined, and held that the secretary of defendant corporation had authority to make and indorse notes in its corporate name. *Jacob Pharmacy Co. v. Southern Banking & Trust Co.*, 97 Ga. 573; 25 S. E. Rep. 171.

One giving a deed to a foreign corporation under a power of sale to secure a loan, held estopped to deny the right of the corporation to exercise the power. *Ray v. Home, etc., Co.*, 98 Ga. 122; 2 S. E. Rep. 56.

A corporation, in the absence of express legislative authority, cannot mortgage its income. *Lubroline Oil Co. v. Athens Savings Bk.*, 104 Ga. 376 30 S. E. Rep. 409 (1898).

A corporation may temporarily rent its property to pay a pressing indebtedness, if such rental does not amount to an abandoning the corporate franchise. *Plant v. Macon Oil & Ice Co.*, Sup Ct. Ga.; 30 S. E. Rep. 567 (1898).]

## Visitorial powers.

§ 1853. Visitorial power over corporation is vested in the superior court of the county where such corporation is located. (New.)

[See *The State v. Georgia Medical Society*, 3 Ga. 608.]

## Rights of corporators.

§ 1854. Corporators have a property interest in the franchise of voluntary private corporations, of which they cannot be deprived except by due process of law. Mandamus will lie against the corporation to enforce such rights, if there is no other legal remedy. (New.)

[See *The Savannah Cotton Exchange v. The State*, 54 Ga. 668.]

## Transfers; stockholders, etc.—Code, §§ 1855–1861.

**Transfer of shares, when complete.**

§ 1855. Except as against the claims of the corporation, a transfer of stock does not require a transfer on the books of the company. (New.)

[See *Southwestern R. R. Co. v. Thomason*, 40 Ga. 408; *Bates-Farley Sav. Bk. v. Dismukes*, 33 S. E. Rep. 175 (1899).]

**Organization before capital subscribed for.**

§ 1856. Persons who organize a company and transact business in its name before the minimum capital stock has been subscribed for, are liable to creditors to make good the minimum capital stock with interest. (New.)

[See *Burns v. The Beck, etc., Hardware Co.*, 83 Ga. 471; 10 S. E. Rep. 131.]

**Contracts between corporations having officers in common.**

§ 1857. A contract otherwise fair is not rendered void by the fact that the contracting parties consist of corporations having the same persons or officers in each. (New.)

[See *The Mayor, etc. v. Onman, Swan & Co.*, 57 Ga. 370; *The Mercantile Trust Co. v. Kiser & Co.*, 91 Ga. 636; 18 S. E. Rep. 358.]

**Directors of insolvent corporations.**

§ 1858. Directors primarily represent the corporation and its stockholders, but when the corporation becomes insolvent they are bound to manage the remaining assets for the benefit of its creditors, and cannot in any manner use their powers for the purpose of obtaining preference or advantage to themselves. (New.)

Dissolution. §§ 1879 et seq.

[See *Lowry Banking Co. v. Empire Lumber Co.*, 91 Ga. 624; 17 S. E. Rep. 968.]

**Majority stockholders entitled to control.**

§ 1859. So long as the majority stockholders confine themselves within the charter powers, a court of equity will require a strong case of mismanagement, or fraud, before it will interfere with the internal management of the affairs of a corporation. (New.)

[See *Lamar v. The Lanier House Co.*, 76 Ga. 640.]

**Proceedings by minority stockholders, when allowed.**

§ 1860. A minority stockholder may proceed in equity in behalf of himself and other stockholders for fraud, or acts ultra vires, against a corporation, its officers and those participating therein, when he and they are injured thereby. But there must be shown —

1. Some action or threatened action of the directors beyond the charter powers; or,

2. Such a fraudulent transaction completed or threatened among themselves or shareholders or others, as will result in serious injury to the company or other shareholders; or,

3. That a majority of the directors are acting in their own interest in a manner destructive of the company, or of the rights of the other shareholders; or,

4. That the majority stockholders are oppressively and illegally pursuing, in the name of the corporation, a course in violation of the rights of the shareholders, which can only be restrained by a court of equity; and it must also appear —

5. That petitioner has acted promptly; that he made an earnest effort to obtain redress at the hands of the directors and stockholders, or why it could not be done, or it was not reasonable to require it.

6. The petitioner must show that he was a shareholder at the time of the transaction of which he complains, or that his shares have devolved on him since by operation of law. (New.)

[See *Alexander v. Searcy*, 81 Ga. 536, at p. 548; 8 S. E. Rep. 630.]

Where, pursuant to a conspiracy on the part of defendants, plaintiff was prevented from voting corporate stock, whereby his election, as an officer of the corporation, was prevented, he was so injured as to be entitled to damages. *Witham v. Cohen*, 100 Ga. 670; 28 S. E. Rep. 505 (1897).]

**Responsibility of corporation for acts of officers.**

§ 1861. Every corporation acts through its officers, and is responsible for the acts of such officers in the sphere of their appropriate duties; and no corporation shall be relieved of its liability to third persons for the acts of its officers by reason of any by-law or other limitation upon the power of the officer, not known to such third person. (Code 1882, § 1680.)

Agents, appointment and power of. §§ 3002 et seq.

[Persons acting publicly as officers of a corporation will be presumed rightfully in office, and their official acts will be binding on corporation so far as third persons are concerned. *Hall v. Carey*, 5 Ga. 239.

If a corporation be dissolved or surrendered the officers under it share its fate. *State v. Mayor*, 5 Ga. 250. The sayings of a stockholder do not bind corporation. *Mitchell v. R. R. Co.*, 17 Ga. 574. Corporation liable in damages for wrongs committed by its officers and agents. *Green v. So. Ex. Co.*, 41 Ga. 515. Corporation bound by audited accounts of its treasurer. *Min. Co. v. King*, 45 Ga. 34. And by contract made by agent in another State. *Id.*

Assets placed in hands of officer, corporation necessary party to bill filed by stockholder against such officer for account. *Young v. Moses*, 53 Ga. 628.

Assignment by officers after term had expired under authority of stockholders granted before, valid. They were officers *de facto* if not *de jure*. *Milliken v. Steiner*, 56 Ga. 251.

Contracts between two corporations, not rendered void by fact that persons making it were officers in both. *Mayor v. Inman*, 57 Ga. 370.

## Collateral attack; bonds; liability, etc.—Code, §§ 1863–1867.

Directors are agents of the corporation, and not of the stockholders. *McDougald v. Bellamy*, 18 Ga. 411.

Directors cannot be considered as trustees, or prohibited, as such, from purchase of trust property or stock belonging to corporation. *Hartridge v. Rockwell*, 5 Ga. 260.

Settlements between company and stockholder, to whom former is indebted, may be made by directors, nothing fraudulent appearing. *R. R. Co. v. Vason*, 57 Ga. 314.

Contract made with corporation itself, mistake in deed by officer, in execution, corrected. *Town Co. v. Brower*, 80 Ga. 258; s. c., 7 S. E. Rep. 273.

That officer had power to contract, and to execute, not alter case. *Id.*

Action for deceit against directors for hypothesizing illegal stock, not affected by subsequent dealing with corporation. *Bank v. Sibley*, 71 Ga. 727. And in such action a corporate existence cannot be called in question. *Id.*

Declarations of directors inadmissible to prove one to have been an agent. *R. R. Co. v. Varndoe*, 81 Ga. 176; s. c., 7 S. E. Rep. 129.

Directors and shareholders are quasi trustees, and without special power under charter cannot bind corporation or its assets by contract to pay usury. *Warehouse Co. v. Johnson*, 62 Ga. 308.

Corporation bound by license granted by general superintendent. *R. R. Co. v. Mitchell*, 69 Ga. 114.

Unwise and improper management of affairs of corporation does not furnish reason for equitable interference at instance of general creditors, when. *Dodge v. Manganese Co.*, 69 Ga. 665.

Corporation liable for negligence of manager. *Factory v. Speer*, 69 Ga. 137.

Mortgage by stockholders, officers interested, effect of. *Holst v. Burrus*, 79 Ga. 117; s. c., 4 S. E. Rep. 108.

Stockholders cannot maintain action against directors for official misconduct, whereby income of corporation is decreased, without making other interested stockholders parties. *Bethune v. Wells*, 94 Ga. 486; s. c., 21 S. E. Rep. 230.

A corporation is necessary party to action by stockholders against directors for misconduct in office. *Id.*

Accommodation indorsers being directors, not entitled to notice of protest, when. *Hull v. Myer*, 90 Ga. 674; s. c., 16 S. E. Rep. 653.

Note given by officer or agent of corporation illegal, no recovery on common counts for money had and received, when. *Dobbins v. Mfg. Co.*, 75 Ga. 239.

Notice to president is notice to corporation. *White v. Barlow*, 72 Ga. 888.

Directors and managers are trustees for stockholders, and are personally liable for misappropriation. *Real Estate Co. v. Bank*, 75 Ga. 40.

Equity is proper form in which to seek release. *Id.*

Whether, for stock illegally issued in excess of amount authorized by charter, the corporation itself or the directors individually are liable, is not decided. *Bank v. Sibley*, 71 Ga. 726.

Agent's authority, by resolution of directors, to purchase under contract reserving title. *MERCHANTS v. COTTRELL*, 96 Ga. 168; s. c., 23 S. E. Rep. 127.

Evidence examined, and held that the secretary of defendant corporation had power and authority to make and indorse notes in its corporate name. *Jacobs Pharmacy Co. v. Southern Banking & Trust Co.*, 97 Ga. 573; 25 S. E. Rep. 171.

A corporation is bound by the acts of its officers within the sphere of their appropriate duties. *Fulton Bldg. & Loan Assn. v. Greenlea*, 103 Ga. 376; 29 S. E. Rep. 932 (1898).

Where name of corporation as grantor, with common seal, is affixed to deed by treasurer, presumption is he had authority to execute. *Carr v. Georgia Loan & Trust Co.*, 33 S. E. Rep. 100 (1899).]

## No collateral attack on corporate existence.

§ 1862. The existence of a corporation, claiming a charter under color of law, can-

not be collaterally attacked. All who have dealt with a corporation as such are estopped from denying its corporate existence. (New.)

[See *Killet v. State of Ga.*, 32 Ga. 292; also *Imboden v. The Etowah, etc., Mining Co.*, 70 Ga. 86.1

## Lessee subject to burdens of lessor corporations.

§ 1863. All corporations, foreign or domestic, operating the franchise of a corporation chartered by this State, are subject to its burdens, and can be sued when and where and for like causes for action for which suits could have been maintained against such other corporation, were it in possession of the franchise so acquired or usurped. (New.)

[See *Alabama Great Southern R. R. Co. v. Fulghum*, 87 Ga. 263; 13 S. E. Rep. 649.]

## Corporation liable notwithstanding sale or lease.

§ 1864. A corporation charged with a duty to the public, cannot, by sale or otherwise, dispose of its property or franchises so as to relieve itself from liability for acts done or omitted, without legislative sanction expressly exempting it from liability. (New.)

[See *The Central R. R. & Banking Co. v. Passmore*, 90 Ga. 203; 15 S. E. Rep. 203.]

## Railroads using the same terminal tracks.

§ 1865. Two or more chartered railway companies whose lines terminate in the same city, may, by contract, within the corporate limits use the same track in common, with or without common ownership, and when they do so the company owning the track is not responsible to its employes for injuries sustained solely by reason of the negligent use of the track by the employes of the other company. (New.)

[See *The Georgia R. R. & Banking Co. v. Fridell*, 79 Ga. 489; 7 S. E. Rep. 213.]

## Bonds of corporation to be certified and recorded.

§ 1866. All public and private corporations in this State, who shall issue or indorse any bonds for circulation, shall furnish to the secretary of State a certified statement showing the letter, date of issue, number of bonds, amount of issue, rate of interest, when and where payable, and the date of the law, if any, authorizing such issue. The secretary of State shall record the same in a book to be kept by him for that purpose (Code 1882, § 1679a.)

## Corporations fined for default.

§ 1867. Public or private corporations neglecting or refusing to comply with the provisions of the preceding section shall be fined in a sum not exceeding five hundred

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Bonds; wages; borrowing by officers; blacklisting — Code, §§ 1868-1876.

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dollars for each offense, one-half of said fine to go to the party giving information of such violation, and the other half to go to the public school fund of the county. (Code 1882, § 1679c.)

**Circulation of unrecorded bonds forbidden.**

§ 1868. No bonds shall be placed in circulation until the provisions with regard to such bonds shall have been complied with, and any person placing such bonds in circulation without such compliance, shall be subject to a fine of five hundred dollars for every bond so put in circulation. (Code 1882, § 1679d.)

**Compensation of secretary of State.**

§ 1869. The secretary of state shall receive as compensation for the record and for giving transcript of the same, twenty cents per hundred words; the fee for recording to be paid by the corporation issuing the bonds, and the fee for transcripts to be paid by the party applying for the same. (Code 1882, § 1679e.)

**Electricity, rent or sale of power.**

§ 1870. Any person or corporation creating electricity in this State may make contracts and lease power, or any part thereof, to any person or corporation. (L. 1894, p. 114.)

**Corporation to redeem certificates for wages.**

§ 1871. Any corporation or person doing business of any kind in this State, who shall issue checks or written evidences of indebtedness for the wages of laborers, shall redeem at full value, in cash, such written evidences of indebtedness, on demand and presentation to the proper person on the regular monthly pay day, and if there be no regular monthly pay-day, then upon demand and presentation on any regular business day, after thirty days from the issuance thereof; and for every failure to redeem such evidences of indebtedness, said corporation or person shall be liable to the owner thereof in the sum of ten dollars, to be recovered by suit, unless said corporation or person shall, upon the trial, prove insolvency or actual inability to redeem at the time of demand and presentation. (L. 1888, p. 48.)

**Use or borrowing for personal use prohibited.**

§ 1872. No officer or agent of any bank or other corporation shall use or borrow for himself, directly or indirectly, any money or other property belonging to any corporation of which he is an officer or agent, without the permission of a majority of the board of directors, or a committee of the board authorized to act. (L. 1887, p. 94.)

See Penal Code, §§ 212, 213, post, for criminal liability.

**Blacklisting prohibited.**

§ 1873. If any corporation doing business in this State, or any agent or employee of such corporation, after having discharged any employee from the service of such company, shall prevent or attempt to prevent by word, writing, sign or other means, directly or indirectly, such discharged employee from obtaining employment with any other person or corporation, such person, agent, employee or corporation shall be liable in penal damages to such discharged person, but this section shall not be construed to prohibit any person or corporation from giving in writing any other person or corporation to whom such discharged person has applied for employment, a truthful statement of the reasons for such discharge, and shall furnish to such discharged employee on his application, to such address as may be given by such discharged employee, within ten days of such application, a true copy of any such written statement. (Act 1891, August 13.)

**Liability.**

§ 1874. If any corporation doing business in this State, shall authorize or permit, with its knowledge and consent, any of its or their officers, agents or employees to commit any of the acts prohibited in the preceding section (except as provided), such corporation shall be liable in treble damages to such employee so prevented from obtaining employment, to be recovered in a civil action. (Act 1891, August 13.)

**Furnish cause of discharge.**

§ 1875. Any person, officer, agent, employer, or company or corporation aforesaid, after having discharged any employee from the service of any such corporation, upon written demand by such employee, shall furnish to him, within ten days from the application for the same, a full statement in writing of the cause of his discharge, and if any such person, officer, agent, employer or corporation shall refuse within ten days after demand to furnish such statement to such discharged employee, it shall be ever after unlawful for any such person or corporation to furnish any statement of the cause of such discharge to any person or corporation or in any way blacklist, or to prevent such discharged person from procuring employment elsewhere, subject to the penalties prescribed. (Act 1891, August 13.)

**Rules as to trials for violations.**

§ 1876. On the trial of any person for offending against the provisions of this article, any other person who may have authorized or permitted, with knowledge and consent, any such offense, or who may have participated in the same, shall be a competent witness, and be compelled to

## Dissolution, etc.—Code, §§ 1879–1883.

give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury, in any matter to which he may have testified. On the trial of any person for any violation of this article, the prosecution shall have the authority and process of the court trying the case to compel the production in court, to be used in evidence in the case, of the books and papers of any such person, company or corporation, and a failure to produce the same, after such reasonable notice as the court may in each case provide, shall be a contempt of court, and punishable as such as against the custodian or person, company or corporation having the control or in charge of such books, and papers, who shall fail to produce the same; Provided, That said written cause of discharge, when so made as aforesaid, at the request of such discharged employee shall never be used as the cause for an action for slander or for libel, either civil or criminal, against the person or authority furnishing the same. (Act 1891, August 13.)

**Duty of person receiving request.**

§ 1877. Any person, company or corporation, who has received any request or notice in writing, sign, word or otherwise, from any other person, company or corporation, preventing or attempting to prevent the employment of any person discharged from the service of either of the latter, on demand of such discharged employee, shall furnish to such employee, within ten days after such demand, a true statement of the nature of such request or notice, and if in writing, a copy of the same, and if a sign, the interpretation thereof, with the name of the person, company or corporation furnishing the same, with the place of business of the person or authority furnishing the same, and a violation of this section shall subject the offender to all the penalties, civil and criminal, provided by the foregoing sections. (Act 1891, August 13.)

**Applicable to combined corporations.**

§ 1878. The provisions of this article shall apply to and prevent, under all the penalties aforesaid, railroad companies or corporations, under the same general management and control but having separate divisions, superintendents, or master mechanics, master machinists or similar officers for separate or different lines, their officers, agents and employers\* from preventing or attempting to prevent, the employment of any such discharged person by any other separate division, or officer, or agent or employer\* of any such separate railroad line or lines. (Act 1891, August 13.)

\* So in Code; should be "employee."

**Public corporations.**

§ 1879. Public corporations being established for public purposes, are always subject to dissolution by the act of the general assembly. (Code 1882, § 1681.)

**Private charters.**

§ 1880. In all cases of private charters hereafter granted the State reserves the right to withdraw the franchise, unless such right is expressly negatived in the charter. (Code 1882, § 1682.)

See Const., art. I, p. 2.

[Section cited. *State v. R. R. Co.*, 60 Ga. 270; *R. & B. Co. v. State*, 54 id. 401.]

Where exclusive authority is vested in a private corporation by its charter, general assembly retains power to modify or restrict such exclusive grant. *R. R. Co. v. R. R. Co.*, 49 Ga. 152.]

**Heretofore granted.**

§ 1881. Private corporations heretofore created, without the reservation of the right of dissolution, and where individual rights have become vested, are not subject to dissolution at the will of the State. (Code 1882, § 1683.)

See Const., art. I, par. 2.

[Section cited. *R. & B. Co. v. State*, 54 Ga. 404.]

**How dissolved.**

§ 1882. Every corporation is dissolved, 1. By expiration of its charter; 2. By forfeiture of its charter; 3. By a surrender of its franchises; 4. By the death of all its members without provisions for a succession. (Code 1882, § 1684.)

[Section construed. *Logan v. R. R. Co.*, 87 Ga. 533; s. c., 13 S. E. Rep. 516. Cited, *Young v. Moses*, 53 Ga. 629. Bankruptcy does not terminate corporate existence nor vacate office of directors. *Holland v. Heyman*, 60 Ga. 174. Rights of creditors after dissolution, how enforced. *Logan v. R. R. Co.*, *supra*.]

Dissolved corporation cannot prosecute pending suits, when. *Van Pelt v. B. & L. Assn.*, 87 Ga. 370; s. c., 13 S. E. Rep. 574.]

**How forfeited.**

§ 1883. A corporation may forfeit its charter: 1. By a willful violation of any of the essential conditions on which it is granted; 2. By a misuser or non-user of its franchises. This dissolution dates from the judgment of a court of competent jurisdiction declaring the forfeiture. (Code 1882, § 1685.)

See Const., art. I, par. 3.

[Section cited. *Young v. Moses*, 53 Ga. 629. A private corporation cannot be deprived of its franchise except by judicial judgment upon a quo warranto. *State v. Mayor*, 5 Ga. 250. If a corporation be dissolved or surrendered the officers under it share its fate. *Id.* Corporation may be dissolved for a breach of trust. *Young v. Harrisons*, 6 Ga. 130.]

## GEORGIA.

### Dissolution; liability of stockholders — Code, §§ 1884-1888.

No advantage can be taken of any non-user or misuser on part of corporation by any defendant in any collateral action. *Id.*; *R. R. Co. v. R. R. Co.*, 14 Ga. 327.

The fact of one person becoming owner of all stock and property of a corporation does not render a corporation dormant, or forfeit franchises, and it is still suable in its corporate name. *Mfg. Co. v. White*, 42 Ga. 148.

Charter of corporation may be forfeited for what. *City v. Gas Light Co.*, 71 Ga. 108. Forfeiture and dissolution can be affected only by judgment of court so declaring, but only from such judgments. *Id.*

Misuser or non-user cannot be set up collaterally as a defense to an action. *Id.*]

#### Surrender.

§ 1884. A corporation may be dissolved by a voluntary surrender of its franchises to the State. In such case such surrender does not relieve its officers or members from any liability for the debts of the corporation. (Code 1882, § 1686.)

**Forfeiture for delinquent taxes.** § 875. See § 1888. Individual liability. § 1889 (3).

[Individuals who compose a corporation may, by contract or in law, incur liabilities during its existence, which will survive the charter. *Hightower v. Thornton*, 8 Ga. 486. Though at common law, upon dissolution, debts due to and from corporation are extinguished. *Id.*

Under Code, a corporation may, by voluntary surrender of its franchises, terminate its existence. *Bank v. Heard*, 37 Ga. 401. But if created by legislative act, the surrender must be accepted by the general assembly. *Id.*]

#### Death of members.

§ 1885. The death of all the members of a corporation, or of so many of them as to render it impossible under the charter to provide a succession, is a dissolution thereof. (Code 1882, § 1687.)

#### Disposition of assets.

§ 1886. Upon the dissolution of a corporation, for any cause, all of the property, and assets of every description belonging to the corporation shall constitute a fund — first, for the payment of its debts, and then for equal distribution among its members. To this end the superior court of the county where such corporation was located shall have power to appoint a receiver, under proper restrictions, properly to administer such assets under its direction. (Code 1882, § 1688.)

[Creditors of insolvent corporation, whose charter has been forfeited, and who have exhausted their legal remedies against it, may sue in chancery, for the assets of that corporation, and have them applied in payment of debt. *Hightower v. Mustian*, 3 Ga. 506.

It is only in a strong case that equity will, at instance of minority stockholder, interfere with management of affairs of a corporation, and appoint a receiver. General charges of fraud, illegality or mismanagement are insufficient and demurrable. *Hand v. Dexter*, 41 Ga. 454.

A preference by mortgage given by an insolvent corporation for the purpose of securing payment of an antecedent debt is not void merely because a director, liable as surety on such debt, would be incidentally benefited. *Atlas Tack Co. v. Macon Hardware Co.*, 101 Ga. 391; 29 S. E. Rep. 27 (1897).

Procedure to get at assets in hands of officer or agent of dissolved corporation. *Young v. Moses*, 53 Ga. 628.

A judgment obtained before filing of petition in equitable proceeding for administering the assets of an insolvent corporation is entitled to preference over claim of unsecured creditors and claims secured by mortgage. Otherwise as to judgment obtained after such petition was filed. *Lubroline Oil Co. v. Athens Savings Bk.*, 104 Ga. 376; 30 S. E. Rep. 409 (1898).]

#### Collateral liability.

§ 1887. The dissolution of a corporation, from any cause, shall not, in any manner, affect any collateral or ultimate or other liability, legally incurred by any of its officers or members. (Code 1882, § 1689.)

[Right to have unpaid stock drawn in, to extinguish outstanding debts, is as clear and strong after as before dissolution. *Hightower v. Thornton*, 8 Ga. 486. Action against directors of bank for overissue does not abate by expiration of charter during pendency of suit. *Moultrie v. Smiley*, 16 Ga. 289. Above section alters the common-law rule. *Robinson v. Lane*, 19 Ga. 338. Liability of directors continue notwithstanding expiration of charter. *Hargroves v. Chambers*, 30 Ga. 581.]

#### Liability of stockholder after transfer of stock.

§ 1888. Whenever a stockholder in any corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such corporation shall fail within six months from the date of such transfer. (Act of 1804, December 18.)

#### Transfer, when complete.

[Transfers of stock made void by charter if made within six months previous to failure of corporation liability. *Lumpkin v. Jones*, 1 Ga. 27.

The personal liability of a corporate stockholder for debts of corporation continues until the stockholder has sold and transferred his stock and given notice thereof under the Code. *Brobston v. Downing*, 22 S. E. Rep. 277.

With or without a clause in charter restraining personal statutory liability of stockholders to amount of stock at its par value at the time debt in question was created, liability exists and continues for any debt incurred by the corporation at any time until stockholder who claims to be exempt by reason of having sold and transferred his stock before debt was created has given notice of such sale conformably to section 1496 of the Code. *Brobston v. Downing*, 95 Ga. 505; s. c., 22 S. E. Rep. 277.

Where personal statutory liability of stockholders is to be apportioned amongst all agreeing to the relative amount of stock severally by each, and where corporation is insolvent and has no assets applicable to payment of its unsecured creditors, one or more of these creditors may bring suit, in behalf of those of others who may choose to come in and be made parties, against all the stockholders and enforce their statutory liability and apportion the amount which each should contribute to discharge the claims of the various creditors. *Brobston v. Downing*, 95 Ga. 505; s. c., 22 S. E. Rep. 277.

Where it was stipulated in original contract of subscription, that it was "to be binding upon each party hereto when \$50,000 has been bona fide subscribed, and not before," and the subscriptions actually amounted to less than that amount, none of the subscribers were legally bound to pay. *Branch v. Augusta Glass Works*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.

## Dissolution; suits; judgments — Code, §§ 1889–1894.

Creditors of an insolvent corporation, the directors of which, having full control of its affairs, have misappropriated its assets so as to put the same beyond reach of these creditors, may unite in an equitable petition for purpose of subjecting these creditors to individual liability because of said misappropriation. *Ellis v. Fullman*, 95 Ga. 445; s. c., 22 S. E. Rep. 568.

Where stock of an incorporated company is pledged by the owner as collateral security for payment of a debt, the pledgee is, as a general rule, entitled to collect and receive the dividends thereon unless this right is reserved by pledgor at the time pledge is made. *Guarantee Co. v. East Rome*, 96 Ga. 511; s. c., 23 S. E. Rep. 503.

Where president, secretary and treasurer actually know that certain shares of stock therein have been transferred by the person in whose name the stock stands on the company's books, to another, such knowledge is notice to the corporation itself. *Guarantee Co. v. East Rome*, 96 Ga. 511; s. c., 23 S. E. Rep. 503.

In the absence of express statutory authority the stock of one corporation cannot be consolidated with that of another, against objection of a majority of stockholders in their corporation. *Tompkins v. Compton*, 93 Ga. 520; 21 S. E. Rep. 79.

Where corporation has authority to increase its capital from \$10,000 to \$50,000, and it only increases it to \$15,000, which amount was fully paid up, and it has appropriated all of its property for its debts, there are no unpaid subscriptions which the stockholders are liable for. *Hale v. Iron Co.*, 94 Ga. 61; 22 S. E. Rep. 217.

Calls for payment of subscriptions which are payable "as the directors may direct," cannot be made by mere street conversation between president and directors of corporation, in which they "agree" that he may call in the subscriptions as needed. Such calls must be made by corporate action on part of directors. *Branch v. Augusta Glass Works*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.]

**Liability when corporation fails.**

§ 1889. The stockholders in whose names the capital stock stands upon the books of such corporation at the date of its failure shall be primarily liable to respond upon such individual liability; but upon proof made that any shareholders at the date of the failure are insolvent, recourse may be had against the person from whom such insolvent shareholder received his stock, if within a period of six months prior to the date of the failure of such corporation. (Act of 1894, December 18.)

[As against a general creditor of a corporation, which has ceased to exercise its franchises, the stockholders are not liable as trustees ex maleficio. There is no privity between the stockholders and creditors. The liability of the corporation must be first established. *Lamar v. Allison*, 101 Ga. 270; 28 S. E. Rep. 686 (1897).]

**Liability of stockholder an asset.**

§ 1890. Such individual liability shall be an asset of such corporation, to be enforced by the assignee, receiver, or other officer having the legal right to collect, marshal and distribute the assets of such failed corporation. (Act of 1894, December 18.)

**List of stockholders to be exhibited.**

§ 1891. All corporations, whose shareholders are individually liable under their charter, shall keep on hand at all times a true and correct list of the shareholders, and it shall be the right of any creditor to inspect

the same at any time during the business hours of any working day. The president and other officers shall produce such lists, whenever required by any creditor of said corporation. (Act 1894, December 18.)

**Penal liability for failure to allow inspection.**  
Penal Code, § 594.

**Members of joint-stock companies, corporations, etc., how sued.**

§ 1892. In all suits against the members of a private association, joint-stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation, of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company, or corporation, or any other person liable, and recover of the member or members sued the amount of unpaid stock in his hands, or other indebtedness of each member or members: Provided, The same does not exceed the amount of the plaintiff's debt against such association, company, or corporation; and if it exceeds such debt, then so much only as will be sufficient to satisfy such debt. (Code 1882, § 3367.)

See § 1852 (1), note.

[Suit may be brought in usual way by citizen of Georgia against a corporation, though cause of action arose in another State. *Berry v. R. R. Co.*, 39 Ga. 555. Section referred to and construed. *R. R. Co. v. McDaniel*, 56 Ga. 195.]

**Notice to stockholders and effect of.**

§ 1893. Plaintiffs, within one month after the institution of any suit against any corporation, joint-stock or manufacturing company, may publish once a week, for four successive weeks, in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said corporation, joint-stock or manufacturing company, for the purposes hereinafter mentioned. (Code 1882, § 3371.)

[Notice by publication under this section need not appear of record. *Stone v. Davidson*, 56 Ga. 179. Section referred to and construed. *Heard v. Sibley*, 52 Ga. 311; *Gresham v. Crossland*, 59 id. 278.]

**Judgment or decree.**

§ 1894. When notice has been given as provided in the preceding sections, and a judgment or decree has been obtained against any corporation, joint-stock or manufacturing company, where the individual or private property of the stockholders is bound for the whole or any part of the debts of said incorporation, joint-stock or manufacturing company, execution shall first be issued against the goods and chattels, lands and

## Actions; process — Code, §§ 1895–1899.

tenements of said corporation, joint-stock or manufacturing company; and upon the return thereof by the proper officer, with the entry thereon of "no property to be found," then, and in that case, the clerk, or other officer, upon an application of the plaintiff, his agent, or attorney, accompanied with a certificate as hereinafter directed to be obtained, forthwith shall issue an execution against each of the stockholders (if required) for their ratable part of said debt and cost of suit, in proportion to their respective shares, or other liabilities under their charter of incorporation. (Code 1882, § 3372.)

[Section referred to and construed. Heard v. Sibley, 52 Ga. 311. Judgment creditor of corporation may go into a court of equity to reach equitable assets of corporation, to exhaust his legal remedies. Stinson v. Williams, 35 Ga. 170.]

Equity will compel payment of sufficient per cent. of unpaid stock to meet debts. R. R. Co. v. McDaniel, 56 Ga. 191. Judgments of stockholders against company may be set off in equity against suit under individual liability calls. Boyd v. Hall, 56 Ga. 563. But such judgment may be attacked for fraud. Id. Where charter provides that stockholders shall be liable pro rata for debts of company, recovery of entire debt may be out of one, provided it does not exceed defendant's proportion. Id.]

## Presiding officer bound to give names, etc.

§ 1895. It shall be the duty of the president or presiding officer of such incorporation, joint-stock or manufacturing company, by whatever name he may be designated, upon application of the plaintiff, his agent, or attorney, forthwith to give a certificate, under oath, of the stockholders in said company, and the number of shares owned by each at the time of the rendition of judgment against said company; and if, upon application by the plaintiff, his agent, or attorney, the president, or officer aforesaid, shall refuse to give a certificate as aforesaid, or shall abscond or conceal himself to avoid giving the same, the plaintiff, his agent, or attorney may make oath of such refusal, and the clerk, or other officer, shall issue an execution against such president or presiding officer, as aforesaid, for the amount of principal, interest and cost of said suit. (Code 1882, § 3373.)

[Transfer of shares on books is prima facie evidence of ownership of shares. Thornton v. Lane, 11 Ga. 459. As to duty of president under above section, see Stone v. Davidson, 56 Ga. 182.]

## Who may defend suit.

§ 1896. If the president, or other officer of said corporation, joint-stock or manufacturing company, shall fail or refuse to defend said suit or suits brought as aforesaid, any one of the stockholders of the said company shall be permitted to plead to and defend the same in as full and ample manner as said company, in its corporate capacity, could or might do. (Code 1882, § 3374.)

[Unless expressly authorized by statute, stockholders are not allowed to plead and defend for the corporation, and are not parties on the record.

Blackman v. R. & B. Co., 58 Ga. 189. And cannot maintain bill for protection of corporate property, without alleging refusal of corporation to act in its corporate name. Ware v. Bazemore, 58 Ga. 317. Section referred to and construed. Stone v. Davidson, 56 Ga. 181.]

## Illegality of execution.

§ 1897. In a judgment against a corporation, joint-stock or manufacturing company, under the provisions of this Code, the defendant or defendants in execution shall be entitled to an illegality under the same rules, regulations and restrictions as defendants are in other cases. (Code 1882, § 3375.)

[Section referred to and construed. Stone v. Davidson, 56 Ga. 181.]

## Cumulative only.

§ 1898. The preceding sections in relation to proceedings against corporations, joint-stock and manufacturing companies shall be understood and construed as cumulative of the common law. (Code 1882, § 3376.)

[Remedy under sections 3367 to 3375 are cumulative. Mosley v. Jones, 66 Ga. 466. Suit against individuals named and to foreclose lien, judgment against them, valid. Id.]

## Service of process.

§ 1899. Service of all subpoenas, writs, attachments, and other process necessary to the commencement of any suit against any corporation in any court, except as hereafter provided, may be perfected by serving any officer or agent of such corporation, or by leaving the same at the place of transacting the usual and ordinary public business of such corporation, if any such place of business then shall be within the jurisdiction of the court in which said suit may be commenced. The officer shall specify the mode of service in his return. (Code 1882, § 3369.)

[Service of summons upon a corporation. See W. L. Co. v. Bank, 30 Ga. 685. Upon a foreign corporation. Ins. Co. v. Carrugi, 41 Ga. 660.

Agent of a foreign corporation may acknowledge service so as to authorize a general judgment against his principal. R. R. Co. v. R. R. Co., 51 Ga. 458.

Service upon president in county where he resided at commencement of action, where books were, and where stockholders were under notice to meet, is sufficient service on company. Bank v. Mfg. Co., 55 Ga. 36.

Service of garnishment on domestic corporation, whose president resides in this State, must be upon president, and not upon subordinate officer, though president be temporarily absent. Stein v. R. R. Co., 60 Ga. 552; Brigham v. Ry. Co., 74 Id. 365.

Garnishment served on corporation based on grant of charter is void. Bartram v. Mfg. Co., 69 Ga. 751.

Members of company cannot be held liable as partners under summons directed to company as a corporation. Id.

Jurisdiction of corporation, as defendant, where locality not fixed by charter, but office established in county of suit. Coal Co. v. Hazlett, 83 Ga. 550; s. c., 10 S. E. Rep. 435.

Officer serving process on corporation to certify in his return manner in which such service was perfected. Hayden v. Bank, 66 Ga. 150.

## Actions; process; creation of corporations by court — Code, §§ 1900—1902, 2349, 2350.

Service on general manager, though out of State, sufficient, when. *Stewart v. Rutherford*, 74 Ga. 436.

**Affidavit** denying legality of service insufficient, when. *Hotel Co. v. Furniture Co.*, 73 Ga. 94.

The agent of a foreign corporation attending court as a witness for the State in a criminal cause, is exempt from service upon him as such agent for process against the corporation. *Fidelity & Casualty Co. v. Everett*, 97 Ga. 787; 25 S. E. Rep. 734.]

**Where suits may be brought on contracts.**

§ 1900. Any corporation, mining or joint stock company, chartered by authority of this State, may be sued on contracts in that county in which the contract sought to be enforced was made, or is to be performed, if it has an office and transacts business there. Suits for damages, because of torts, wrong or injury done, may be brought in the county where the cause of action originated. Service of such suits may be effected by leaving a copy of the writ with the agent of the defendant, or if there be no agent in the county, then at the agency or place of business. (Act 1885, October 16.)

**Garnishment proceedings.**

§ 1901. Where such corporation has an agent and place of business in any county or district in which there may be a suit, attachment or judgment upon which garnishment is sought against such corporation, the court wherein is pending said proceedings upon which the garnishment is based shall have jurisdiction also of the garnishment proceeding, and service of summons of garnishment upon the agent in charge of the office or business of the corporation or company in the county or district at the time of service shall be sufficient service. (Act 1885, October 16.)

[Officer's return designating person served simply "agent," not basis for taking judgment against corporation by default. *Hargis v. Ry. Co.*, 90 Ga. 42; s. c., 15 S. E. Rep. 631.]

**Service by publication.**

§ 1902. In all cases where any corporation shall have no public place for doing business, or shall have no individual in office upon whom service of writs or process may be perfected within the knowledge of any party, the plaintiff may make an affidavit that the said corporation has no public place of doing business, or has no individual in office upon whom service of writs or process may be perfected, within the knowledge of said complainant, and such affidavit being filed in the clerk's office of the court to which the said writ may be made returnable, the clerk of the said court shall issue a citation to the said defendants to be and appear at the said court, to answer the complaint; which citation shall be published once a week for three weeks prior to the court to which the said complaint may be returnable, in some newspaper published in the county in which suit is brought. If no paper is published therein, then in the one nearest

thereto; and such advertisement shall be deemed and held a service upon such corporation for all purposes, and any copy of the newspaper containing said publication shall be received in any of the courts as sufficient evidence of such service. (Code 1882, § 3370.)

[Section referred to and construed. *Heard v. Sibley*, 52 Ga. 312; *Young v. Moses*, 53 id. 628; *Cherry v. R. R. Co.*, 59 id. 447; *Branch v. Bank*, 50 id. 413.]

**Special terms to grant charters.**

§ 2349. The judges of the superior courts of this State are authorized in their discretion to call and hold special terms of said courts for the purpose of granting charters to corporations. (Act 1887, September 21.)

[Above act authorizing judges to call special terms to grant charters to corporations, not unconstitutional. *Branch v. Augusta Glass Works*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.]

**Confirmation of charters.**

§ 2349a. (Added by editors.) Be it enacted by the general assembly of the State of Georgia, That all charters of corporations which have been granted by the superior courts of this State since the passage of the above recited act, approved November 13, 1889, in the granting of which the law of this State in such case provided has been substantially complied with, as it existed previous to the passage of said above recited act, be, and the same is, hereby ratified and confirmed, and declared to be valid and legal and to have all the force, effect, power and authority as if said charters had been granted in strict compliance and conformity with said above recited act, approved November 13, 1889.

§ 2. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are hereby repealed.

(Approved September 7, 1891.)

**Superior court may create what corporations.**

§ 2350. The superior courts of this State shall have power to create corporations, except for banking, insurance, railroad, canal, navigation, express, and telegraph companies, by compliance with the following provisions:

1. The persons desiring the charter shall file in the office of the clerk of the superior court of the county in which they desire to transact business, a petition or declaration, specifying the objects of their association, and the particular business they propose to carry on, together with their corporate name, and the amount of capital to be employed by them actually paid in, and their place of doing business, and the time not exceeding twenty years, for which they desire to be incorporated; which petition or declaration shall be published once a week for four weeks in the nearest public gazette to the point where such business is located, before said court shall pass an order declaring said

## Creation of corporations by court — Code, § 2350.

Application granted. After the granting by a court of the order of incorporation, the petition and said order shall be recorded together by said clerk in a book to be kept for that purpose, and to be known as "the Record of Superior Court Charters," and which shall be kept appropriately indexed by said clerk; but this shall not dispense with the recording of the order of incorporation upon the minutes of the court, also as a part of the proceedings of the court. \* \* \* (Code §2, § 1676, subdivision 1, as amended by Act 1891, September 8.)

[Applicants must specify business to be carried on, place of business and amount of capital to be used. *In re Deveaux*, 54 Ga. 673. Fraud in inducing one to join in organizing company, relievable against in equity. *Stewart v. Rutherford*, 74 Ga. 435. Corporation properly party. *Id.* Insolvency of corporation need not be alleged, nor relief asked of stockholders. *Id.* Injunction against procurement of charter, not granted. *Med. Col. v. Thompson*, 92 Ga. 564; s. c., 1 S. E. Rep. 430.

Fraud of corporation in obtaining its charter cannot be set up as a defense by its debtors. *Attison v. B. & L. Assn.*, 63 Ga. 374.]

**2. If**, upon hearing such petition, the court shall be satisfied that the application is legitimately within the purview and intention of this code, it shall pass an order declaring the said application granted, and the petitioners and their successors incorporated for and during a term not exceeding twenty years, with the privilege of renewal at the expiration of that time according to the provisions above set forth. A certified copy of this petition and order, under the seal of this court, shall be evidence of such incorporation in any court in this State.

[Commissioners appointed by law to receive subscriptions to stock have discretion to determine what is a bona fide subscription. *Napier v. Poe*, 1 Ga. 170.

When petition to Superior Court to obtain charter failed to state fully objects of corporation, defect in petition held to be cured by court's specifying objects in granting its assent. *Redine v. L. & B. Assn.*, 54 Ga. 474.

Purposes and objects of corporation, when sufficiently set forth in petition. *Van Pelt v. B. & L. Assn.*, 79 Ga. 439; s. c., 4 S. E. Rep. 501.

Power of courts to grant charter to corporations is legislative and not judicial. *Gaslight Co. v. Est*, 78 Ga. 318. There is no provision authorizing anyone to appear and object to such grant of corporate powers, and order granting charter reviewable. *Id.*

Estoppel to deny existence of corporation, as against creditors without notice, after charter obtained. *Stewart Co. v. Rau*, 92 Ga. 511; s. c., 17 S. E. Rep. 748.

Acceptance of charter presumed, if granted after being applied for. *City v. Gaslight Co.*, 71 a. 106.

Parties carrying on business as a corporation *de facto*, estopped from denying corporate charter and name. *Ice Co. v. Porter*, 70 Ga. 637. Corporation *de facto* changed into one *de jure* liable for debts of first. *Id.*

One dealing with a corporation as such, estopped to deny corporate existence. *Bank v. Padgett*, 62 Ga. 150. And members of *de facto* corporation liable as individuals or as partners. *Id.*

One corporation dealing with another is estopped to deny corporate existence of the other, when. *Aboden v. Min. Co.*, 70 Ga. 86.

Under Constitution of 1868, Superior Courts had no authority to incorporate manufacturing companies. *Kehler v. Mfg. Co.*, 55 Ga. 639.]

3. No corporation created under this section shall commence to exercise the privileges conferred by the charter, until ten per cent. of the capital stock is paid in, and no charter shall have any force or effect for a longer period than two years, unless the incorporators, within that time, shall in good faith commence to exercise the powers granted by the act of incorporation; and, in case of the failure of said corporation, the stockholders shall be bound, in their private capacity, to any creditor of said corporation for the amount of stock subscribed by them, until the said subscription is fully paid up, or until the stockholder shall have paid, out of his private property, debts of the said corporation to an amount equal to his unpaid subscription.

## Relief from individual liability. § 1888ff.

[This clause not applicable to legislative charters. *City v. Gaslight Co.*, 70 Ga. 464. It is the amount of shares subscribed, and not the sums paid in, which constitutes the capital stock. *Hightower v. Thornton*, 8 Ga. 486. A subscription for stock is a debt, which corporation may call in to satisfy creditor. *Id.* Right to have unpaid stock drawn in, to extinguish outstanding debts, is as clear and strong after as before dissolution. *Id.* Unpaid subscriptions are corporate property, which can be reached by creditors; and this right exists entirely independent of any statutory provision. *Id.* A court of equity will provide a remedy to enable creditors to appropriate this trust fund. *Id.*

Misrepresentations made by a company before incorporation cannot, after incorporation, be made ground of an action, by creditors of the corporation against stockholders. *Matthews v. Stanford*, 17 Ga. 543. Neither can fraudulent non-disclosures or concealments. *Id.* The action should be against the parties implicated. *Id.*

Where stockholder is made individually liable upon execution issuing against corporation, he is entitled to the remedy by illegality, same as any other defendant in *fl. fa.* *Force v. Leather Co.*, 22 Ga. 86.

Change in location of railroad, if consistent with original design and object of the enterprise, will not relieve stockholder from his subscription, though made without his consent. *Wilson v. R. R. Co.*, 33 Ga. 466.

Where no notice of call or assessment of stock is required to be given by the charter, such notice not essential. *Id.*

An issue or an offer to issue certificates of stock is not a condition precedent to right of recovery and subscription. *Fulgam v. R. R. Co.*, 44 Ga. 597; *R. R. Co. v. Ayres*, 56 id. 230.

Holders of preferred stock entitled to claim as creditors, when. *Totten v. Tison*, 54 Ga. 139. Suit for stock subscription; no defense that railroad company has been authorized by an action. *Mullins v. R. R. Co.*, 54 Ga. 580.

Subscriber to stock contracts with reference to charter; number of shares to be subscribed, or stock necessary to do contemplated business, constitutes important element. *R. R. Co. v. Sullivan*, *Same v. Amberg*, 57 Ga. 240. Release of subscriptions produces same practical result as failure to take amount subscribed by charter. *Id.* Nominal subscription, to fulfill letter and break spirit of contract, no compliance with charter. *Id.*

In suit to collect capital stock subscribed, evidence of value of that or any other stock, irrelevant. *R. R. Co. v. Ayres*, 56 Ga. 230.

Calls for subscription must be clearly proved, and recovery should be limited to aggregate amount of calls not met. *Id.*

## Creation of corporations by court — Code, § 2350.

Where subscriptions to be paid in property, burden is on corporation to show that such payment was equivalent to cash. *Hayden v. Cotton Factory*, 61 Ga. 233.

Directors having approved and accepted subscription, burden of showing that all such subscriptions were worthless or fraudulent is on party setting up such defense. *Hayden v. Cotton Factory*, 61 Ga. 233.

Number and qualification of directors, fixed by charter, essential to be adhered to to make calls valid; but payments under irregular calls show acquiescence. *R. R. Co. v. Vason*, 57 Ga. 314.

Conditions precedent to validity of calls must be shown, before recovery can be had. *Id.*

Forfeiture of stock for failure to meet calls, is satisfaction of debt; but mere threat to forfeit if not paid will not bar action. *Id.*

Member of chartered company bound by acts of company, when. *May v. R. R. Co.*, 48 Ga. 109.

Title of purchaser of stock complete when seller has given on the scrip authority to proper officer to transfer, and price has been paid. *Ross v. R. R. Co.*, 53 Ga. 514.

Capital stock not subscribed to minimum, and unpaid, but corporators organized, doing business, contract debts, etc.; liability to creditors. *Burns v. Beck*, 83 Ga. 471; s. c., 10 S. E. Rep. 121.

Amount of capital stock being in discretion of company, when once fixed by it conditional subscriptions not taken into the estimate. *Brand v. R. R. Co.*, 77 Ga. 506; s. c., 1 S. E. Rep. 255.

Subscriptions to stock beyond charter limit are void and not collectible. *Clark v. Turner*, 73 Ga. 1.

Failure to secure subscriptions to amount of minimum required by charter, or release of subscriptions below that amount, discharges subscriber. *Hendrix v. Academy*, 73 Ga. 438.

Where charter requires certain amount of stock to be subscribed and ten per cent. paid in before beginning business, these are conditions precedent, and business done before complying is ultra vires.

A subscriber on condition that others would purchase his shares at the end of three years on thirty days' notice, held not required to elect to keep the stock, or to give said notice, immediately on the three years expiring. *Rogers v. Burr*, 25 S. E. Rep. 339.

A subscriber on condition of a guarantee of dividends for a certain term, held entitled to recover on the guarantee, though he did not satisfy the guarantors of the failure to pay dividends until the expiration of said term. *Id.*

A contract made by certain subscribers with others, whereby they guaranteed 8 per cent. dividend for three years, and agreed to purchase the stock at par if subscribers did not care to longer continue in the enterprise is valid, and based on sufficient consideration. *Rogers v. Burr*, Sup. Ct. Ga., 31 S. E. Rep. 438 (1898).

Evidence held to show a contract between plaintiff and the promoters of a corporation for services in obtaining subscribers to stock. *Pratt v. Finkle*, 25 S. E. Rep. 941.

A receiver of a corporation may deliver stock to a subscriber on payment of the subscription. *Chattanooga R. & C. R. Co. v. Warthen*, 25 S. E. Rep. 988.

A sale of a subscription to a company in which the subscriber was not entitled to receive stock on payment, held not to avoid the subscription where the sale was rescinded. *Id.*

Material amendments of the charter, which were not accepted, held to avoid a subscription. *Id.*

Parol evidence is not admissible to show that a subscription to stock was made upon an oral condition agreed to before the subscription was signed. *Id.*

Where the subscription was assigned to another corporation, held, that the subscriber was entitled to receive stock in the successor company. *Id.*

The assignee of a subscription to railroad stock may enforce payment in any case in which the company could do so. *Id.*

Holder of stock as collateral, not vested with powers and privilege of a stockholder. *Bank v. Sibley*, 71 Ga. 726.

Conditions precedent in note given for installments of stock subscribed, discussed. *Johnson v. R. R. Co.*, 81 Ga. 725; s. c., 8 S. E. Rep. 531.

Conditional subscriptions not estimated in reckoning capital stock subscribed, when. *Brand v. R. R. Co.*, 77 Ga. 512; s. c., 1 S. E. Rep. 255.

Where some subscriptions have been made upon a condition precedent plaintiff must show that conditions have been either complied with or waived. *Id.*

Future creditors cannot call on stockholders who, by resolution, have reduced subscriptions below charter minimum, for more than difference, unless credit was given on good faith of original amount. *Hill v. Silvey*, 81 Ga. 509; s. c., 8 S. E. Rep. 588.

Subscriber not estopped by ratification from setting up that company began business in violation of law. *Academy v. Flanders*, 75 Ga. 14.

Fraud in inducing subscriptions, equity proper form for redress. *Bank v. Bartlett*, 71 Ga. 708. But subscriber cannot avoid his contract, if, after notice of the fraud, he has derived any benefit of his shares or in any manner acted as a shareholder. *Id.*

Subscription induced by fraud, binding where debts subsequently contracted. *Turner v. Ins. Co.*, 65 Ga. 649.

Transfer of stock and receiving back assets, impose no liability, when. *Morgan v. Brower*, 77 Ga. 634.

Fraud between corporation and corporator does not affect creditors. *Howard v. Glenn*, 85 Ga. 238; s. c., 11 S. E. Rep. 610.

Release of some stockholders no release to another unless his liability increase thereby. *Id.*

Stockholders relieved of liability for indorsing note of corporation, by foreclosure of mortgage of corporate property, whether liable to other creditors for diminution of assets. *Weihl v. Atla. Co.*, 89 Ga. 297; s. c., 15 S. E. Rep. 282.

While corporation formed under provisions of above section may not begin and transact business for which it was chartered until 10 per cent. of the capital stock had been paid in, it may, before it has been done, organize and collect subscriptions to its actual stock. *Branch v. Augusta Glass Co.*, 95 Ga. 573; s. c., 23 S. E. Rep. 128.

A valid subscription to the stock of a manufacturing corporation, unless required in the charter, need not be in writing. *Rogers v. Burr*, Sup. Ct. Ga., 31 S. E. Rep. 438 (1898).

A subscriber to stock may, in an action to recover subscription, set up that after receiving his subscription the corporation sold and delivered all the stock it was legally entitled to issue. *Leigh v. Chattanooga R. & C. R. Co.*, 104 Ga. 13; 30 S. E. Rep. 381 (1898).]

4. The clerk of the court, for his services, shall receive the usual fees allowed for similar services in other cases.

5. Corporations thus created may exercise all corporate powers necessary to the purpose of their organization, but shall make no contract or purchase, or hold any property of any kind, except such as is necessary in legitimately carrying into effect such purpose, or for securing debts due to the company.

#### Powers of a corporation. § 1852.

6. (As amended Dec. 16, 1897.) The powers conferred in this section shall extend to the amendment and renewal of all charters contemplated in said section, with the jurisdiction of said courts, whether the original charter sought to be amended or renewed was originally granted by the general assembly of the State or by a superior court of this State.

## Assignments; receivers — Code, §§ 2698, 2703, 2706, 2716.

[An act to extend charter of a corporation, by usage, included the terms or condition by which said extension is granted. *Robinson v. Bank*, 18 Ga. 65.]

7. (Enacted December 16, 1897.) The renewal of charters by the superior courts of this State under the powers conferred by this section, shall be granted by the said superior courts in advance of the expiration of such charters, but to take effect from the date of such expiration, upon the filing in the office of said superior court of a petition signed with the corporate name of the company whose charter is sought to be renewed, stating the name of the corporation, when incorporated, the date and manner of its original incorporation, and all amendments thereto, that it desires a renewal of its charter as set out in the original act of incorporation, and the amendments thereto, together with any further amendments which may be desired in the renewal of said charter; and shall file along with said petition a certified abstract from the minutes of the corporation showing that the application for renewal and amendment had been authorized by proper corporate action, and shall in all other respects comply with the requirements of this section, so far as the same applies to the grant of incorporation for the company or association whose charter is sought to be renewed.

#### TITLE IV. RELATIONS ARISING FROM CONTRACTS.

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#### Corporation not municipal may assign.

§ 2698. Any corporation, not municipal, may make an assignment for the benefit of creditors, but no such corporation shall be allowed therein to prefer any creditor or class of creditors, except such as have debts entitled to priority by the laws of this State. (Act 1894, December 13.)

#### Affidavit to be annexed to assignment.

§ 2703. At the time of signing said deed of assignment, \* \* \* the officer acting for the corporation making an assignment, shall make an affidavit annexed to such assignment, that "the said assignment conveys all property held, claimed, or owned by the assignor at the time of making the assignment; that all recitals and all esti-

mates of totals and values therein and all list creditors are true to the best of his knowledge and belief; and that the debts set out as due to the preferred creditors are, bona fide, just, due, and unpaid; and, that said assignment is not made for the purpose of hindering, delaying, or defrauding creditors." (Act 1894, December 13.)

**Foreign assignments must conform to law of this State.**

§ 2706. No property in this State shall pass under any assignment made by corporations, persons, or firms out of this State, unless such foreign assignment shall comply with the law of assignments in this State. (Act 1894, December 13.)

#### Receiver for insolvent trader.

§ 2716. In case any corporation, not municipal, or any trader, or firm of traders, shall fail to pay, at maturity, any one or more matured debts, payment of which has been properly demanded of such debtor, and by him refused, and shall be insolvent, it shall be in the power of the court of equity, under a creditor's petition, to which one or more creditors, representing one-third in amount of the unsecured debt of such insolvent corporation, trader, or firm of traders, whose debts are matured and unpaid, shall be necessary parties, to proceed to collect the assets, real and personal, including choses in action and money, and appropriate the same to the creditors of such trader, firm of traders, or corporation. (Code 1882, § 3149a, as amended by Act 1894, December 13.)

#### Individual liability. See §§ 1888, 1889.

[A citizen cannot be made receiver of a broken corporation without his consent. *Bethune v. Dougherty*, 21 Ga. 257. Under above section, counsel fees are to be borne by creditors proportionately. *Trust Co. v. Thurman*, 20 S. E. Rep. 141.

An existing corporation may make an assignment for benefit of creditors. *McCallie v. Walton*, 37 Ga. 611.

Insolvent corporation is incapable of making general assignment for benefit of creditors, either with or without preference. *Steel Co. v. Agr. Works*, 76 Ga. 135.

Assignment by corporation, while in existence, good against debtor though charter expires before assignee sues. *Harvey v. Cubbedge*, 75 Ga. 793.

Assets of corporation trust fund to pay debts, and stockholder is chargeable with notice of the trust, and cannot hold adversely so as to defeat judgment creditor. *Moses v. Mfg. Co.*, 62 Ga. 456.

Unpaid subscriptions of insolvent corporation are assets for benefit of creditors, of which court of equity will compel payment. *King v. Sullivan*, 93 Ga. 621; s. c., 20 S. E. Rep. 76. But jurisdiction for this purpose over a foreign corporation which has no office, officer, agent, or place of business in this State, cannot be obtained by merely serving corporation by publication. *Id.* How creditors must proceed in such case. *Id.*

A non-trading corporation subject to Insolvent Traders Law. *Nat. Bk. v. Factory*, 91 Ga. 284; s. c., 18 S. E. Rep. 160.

Corporation expires by limitation of charter; pending suit, a receiver appointed, receiver maintains action. *Houston v. Redwise*, 85 Ga. 130; s. c., 11 S. E. Rep. 662.

## Liens; agency, etc.— Code, §§ 2789, 2825, 3002.

President of insolvent corporation liable for contempt, when. Tolleson v. Bank, 85 Ga. 171; s. c., 11 S. E. Rep. 599.

Decree making assessment for unpaid subscription to capital stock of insolvent corporation, binds corporator though he has no notice. Howard v. Glenn, 85 Ga. 238; s. c., 11 S. E. Rep. 610.

Corporate assets of every description constituted fund for payment of its debts. Beck v. Henderson, 76 Ga. 360.

Capital stock subscribed reduced by resolution to actual amount paid in, all subscribers assenting, releases them from further liability to corporation and to each other. Hill v. Silvey, 81 Ga. 501; s. c., 8 S. E. Rep. 808. But reduction being to an amount less than minimum authorized capital, creditors may hold stockholders for difference. Id.

If amount fixed and required by charter has not been subscribed, or subscriptions have been realized, without consent of stockholders, his subscription cannot be enforced against him. Brand v. R. R. Co., 77 Ga. 506; s. c., 1 S. E. Rep. 255.

Equitable transfer to third person to pay debts of corporation are enjoined at suit of shareholder not paid up. Landes v. Mfg. Co., 73 Ga. 172.

Owner of all the shares of a bank owing no debts, transferring title to charter, is not liable for debts subsequently contracted, when. Morgan v. Brown, 77 Ga. 627.

Receiver may sue; a decree authorizing, admissible, without pleadings, when. Beck v. Henderson, 76 Ga. 360.

Insolvent corporation may make mortgage as additional security to note indorsed by stockholders. Weihl v. Atla. Co., 89 Ga. 297; s. c., 15 S. E. Rep. 282.

When corporation is to be regarded as insolvent. Banking Co. v. Lumber Co., 91 Ga. 625; s. c., 17 S. E. Rep. 968.

The fact that one corporation owns the entire capital stock of another does not vest in it legal title to the latter's property so as to render such property subject to the former's debts as against the latter's creditor. Exchange Bank v. Mason Const. Co., 97 Ga. 1; 25 S. E. Rep. 326.

On rescission of a contract of sale entered into by an insolvent corporation, a stockholder who advanced money for the betterment of the property purchased, held not entitled to restitution as a creditor precedent. Collins Park, etc., R. Co. v. Short Elec. Ry. Co., 98 Ga. 62; 25 S. E. Rep. 929.]

## Chancellor's power in such cases.

§ 2717. The chancellor, under such proceedings as are usual in equity, may grant injunctions and appoint receivers for the collection and preservation of the assets in the cases provided by this chapter, and may at any time appoint an auditor and take all proper steps to bring the matter to a final hearing. (Code 1882, § 3149b.)

## Who may be parties.

§ 2718. Any creditor may become a party to said petition under an order of the court, at any time before the final distribution of the assets, becoming chargeable with his proportion of the expense of the previous proceedings. (Code 1882, § 3149c.)

## No preference; assets, how distributed.

§ 2719. Upon the appointment of a receiver, no creditor shall acquire any preference, by any judgment or lien, on any suit or attachment, under proceedings commenced after the filing of the petition, and all assignments and mortgages to pay or secure existing debts made after the filing

of said petition shall be vacated, and the assets be divided pro rata among the creditors, preserving all existing liens. (Code 1882, § 3149d.)

## Allowance for defendant's support.

§ 2720. It shall be in the power of the judge to make a suitable allowance for the defendant for a support during the pendency of the proceedings, having in so doing respect to the condition of the defendant and the circumstances of the failure. (Code 1882, § 3149e.)

## Who is a trader.

§ 2721. Any person or firm shall be considered a trader who is engaged, as a business, in buying and selling real or personal estate of any kind, or who is a banker or broker or commission merchant, or manufacturer, manufacturing articles to the extent of five thousand dollars per annum. (Code 1882, § 3149f.)

## Chancellor may recommend debtor's release.

§ 2722. It shall be in the power of the chancellor, in his final judgment in the cases provided for, to express his opinion, if the facts authorize it, that, from the facts as they have transpired during the progress of the cause, the defendant has honestly and fairly delivered up his assets for distribution under law, and to recommend to the creditors of the defendant that they release him from further liability. (Code 1882, § 3149g.)

## Liens under charters.

§ 2789. All liens created under the charters of incorporated companies are continued under this Code. (Code 1882, § 2000.)

## Lien by by-laws.

§ 2825. The by-laws of a corporation may create a lien upon the shares of other property of the stockholders in favor of the company; such lien is binding upon the corporators themselves, and upon all creditors giving credit with notice, or purchasers at public or private sale purchasing with notice. (Code 1882, § 1999.)

See § 1852 (3), note.

[Power to sell stock of delinquent stockholder is a cumulative remedy, and does not impair right to compel payment by action. Hightower v. Thornton, 8 Ga. 486.

Stockholder whose stock has been forfeited, not relieved from payment of note given by him for stock. Mitchell v. R. R. Co., 17 Ga. 574.

Transfer of stock to an assignee did not destroy existing liens to others. Dobbins v. Walton, 37 Ga. 614.]

## Agency, how created.

§ 3002. \* \* \* A corporation may create an agent in its usual mode of transacting

Franchises; stocks; estates — Code, §§ 3064, 3070, 3091.

usiness, and without its corporate seal. Code 1882, § 2182.)

Officers, see § 1861.

[Agency created by ratification of acts. Bank . Bank, 1 Ga. 418.

Promissory note given by agent will bind corporation, when. Butts v. Cuthbertson, 6 Ga. 166. A corporation is liable for frauds and torts of its agents in same manner as individuals; tendency of the law is to place corporations and individuals upon same footing. McDougal v. Belumy, 18 Ga. 411; Mill Co. v. State, 54 Id. 635.

If agent of a corporation have authority to convey a mortgage, and affixes thereto anything which the law recognizes as a seal, it will be a good execution by the corporation. Johnston v. rawley, 25 Ga. 316.

Corporation may be charged with libel through its agent. Machine Co. v. Souder, 58 Ga. 64. General superintendent is agent of corporation, and demand on him by employee for wages was sufficient. Hobbs v. Lumber Co., 74 Ga. 371.

Powers of agent of corporation to make note, under charter and letter of attorney, is to be construed by court. Dobbins v. Mfg. Co., 75 a. 238. Agent to bind company, all requirements of charter must be pursued. *Id.*

Sayings and acts of agent, within scope, binding. Ins. Co. v. Edwards, 74 Ga. 228.

Statement of man that he is agent will not make corporation his principal. R. R. Co. v. Varnedoe, 81 Ga. 176; s. c., 7 S. E. Rep. 129.

Certiorari of corporation, affidavit of agent held good here. Pioneer Co. v. Mfg. Co., 67 Ga. 38.

A contract by agent under seal is his individual contract, when. R. R. Co. v. Varnedoe, 81 Ga. 76; s. c., 7 S. E. Rep. 129.

Corporation acts only by and through its members and agents; their acts or frauds are its own. *Uche v. Browne*, 74 Ga. 251.

Admissions of agents of corporation, in scope of business, admissible in evidence. Imboden v. Min. o., 70 Ga. 87. Also of president in an action for business of his office. *Id.*; Dobbins v. P. Co., 75 Ga. 450.

Power of agent to bind corporation by promissory note, not implied, when. Dobbins v. Mfg. o., 75 Ga. 238.]

Revocation.

§ 3003. 1. Generally an agency is revocable at the will of the principal. The appointment of a new agent for the performance of the same act, or the death of the principal or agent, revokes the power; however, the power is coupled with an interest in the agent himself, it is not revocable at will; and in all cases the agent may recover from the principal, for an unreasonable revocation, any damages he may have suffered by reason thereof.

But every creditor or other person advancing money upon the pledge of a certificate of stock, or other script representing ownership or interest in corporations in Georgia, shall have such an irrevocable interest in such certificate of stock or other script as not to be affected by the death, insanity, or legal disability thereafter of the person in whose name such stock or other script stands upon the books of any corporation in Georgia; but such donee or holder of such stock or script signed in blank, coupled with the power of attorney, shall have the same right after the death, insanity, or legal disability of the person in whose name said stock stands

upon the books of said corporation as before the death, insanity, or legal disability of such person. (Code 1882, § 2183, as amended by Act 1894, December 13.)

#### When agent has right of action.

§ 3037. Generally an agent has no right of action on contracts made for his principal. The following are exceptions: \* \* \*

2. Where promissory notes or other evidences of debt are made payable to an agent of a corporation or joint-stock company. (Code 1882, § 3037.)

#### TITLE V. OF PROPERTY AND THE TENURE BY WHICH IT IS HELD.

Sec. 3064. Franchise, when exclusive.

3070. Stocks personality.

#### Franchise, when exclusive.

§ 3064. No franchise granted by this State shall be held to be exclusive, unless plainly and expressly so declared to be in the grant. (Code 1882, § 2234.)

[In construction of statutes, made in derogation of common right, and in favor of corporation, care should be taken not to extend them beyond their express words or their clear import. Mayor v. R. R. Co., 7 Ga. 221; Mayor v. Hartridge, 8 Ga. 22.]

Where exclusive authority is vested in a private corporation, said body retains power to modify or restrict such exclusive grants. R. R. Co. v. R. R. Co., 49 Ga. 151.

Charter rights antagonistic to rights of private property will be strictly construed, and their exercise must be in direct compliance with law granting them. R. R. Co. v. Gilbert, 71 Ga. 591.

Grants of power must be expressed or by necessary implication. Davis v. R. R. Co., 87 Ga. 605; s. c., 13 S. E. Rep. 567.]

#### Stocks personality.

§ 3070. \* \* \* Stocks representing shares in an incorporated company holding lands or a franchise in or over lands are personality. (Code 1882, § 2237.)

[Railroad stock is personal assets. R. R. Co. v. Thomason, 40 Ga. 408; Ross v. R. R. Co., 53 Id. 514.

Bona fide purchaser of railroad stock protected. Stinson v. Thornton, 56 Ga. 377.]

#### TITLE VI. OF ESTATES.

##### Increase.

§ 3091. The natural increase of the property belongs to the tenant for life. Any extraordinary accumulation of the corpus — such as issue of new stock upon the share of an incorporated or joint-stock company — attaches to the corpus and goes with it to the remainderman. (Code 1882, § 2256.)

[“Income” devised to life tenant, with remainder over, dividends, whether in cash or in certificates of indebtedness, are part of the income, and go to life tenant. Miller v. Guerrard, 67 Ga. 284.]

Discovery; executions — Code, §§ 3953-3956, 5430, 5431.

**TITLE VII. TITLE AND MODE OF CONVEYANCE.**

**Transfer of stock by foreign administrator.**

§ 3525. Such foreign executor or administrator or foreign guardian may transfer the stock of any bank or other corporation in this State standing in the name of the decedent or ward and check for deposits made by him and dividends declared on his stock, first filing with the bank or corporation a certified copy of his appointment and qualification; Provided, however, That no stock shall be transferred until the foreign executor, administrator or guardian shall have given notice once a week for four weeks in the paper in which the sheriff's notices are published in the county of the principal office of the corporation of his intention to make said transfer. (Code 1882, § 2618, as amended by Act 1893, December 18.)

[Foreign guardian, if authorized by law of State of appointment, may sell and transfer stock in corporation of this State without application to courts here. Ross v. R. R. Co., 53 Ga. 514.]

**TITLE X. OF EQUITY.**

**Discovery at law.**

§ 3953. Discovery may be had from the opposite party, either nominal or real, in any case pending in any court in this State. (Code 1882, § 3810.)

**Discovery from persons and corporations.**

§ 3954. 1. The party seeking such discovery may either subpoena the other party as a witness, or else file interrogatories, and sue out a commission, as in cases provided for other witnesses. In the latter event, the right of cross-examination exists as in other cases. 2. And in all cases in any of the courts of this State where either the plaintiff or defendant is a corporation, either foreign or domestic, public or private, it shall be the right of the opposite party to file with the clerk of the court, where such case is pending, interrogatories directed to the president, secretary, treasurer, or other officer or agent of said corporation, and it shall be the duty of the officer or agent named in such interrogatories to sue out a commission directed to himself, and to have said interrogatories executed and returned to the next term of the court. The opposite party, or his attorney, shall give twenty days' notice before the sitting of said court to the attorney of record, or to any officer or agent of such corporation in the county where suit is pending, that interrogatories have been so filed. Said corporation or its agent shall not be required to advance the costs of executing said interrogatories. (Code 1882, § 3811, as amended by Act 1889, November 12.)

**When subject to attachment for contempt.**

§ 3956. \* \* \* And if either party be a corporation, the officer called on to give testimony shall be subject to attachment for contempt upon his failure to answer, and the court may dismiss the case or strike the plea, according as the party corporation may be plaintiff or defendant, upon the failure of any of its officers or agents to give testimony or to execute and return interrogatories as provided by law. (Code 1882, § 3813, as amended by Act 1889, November 12.)

[Statute in respect to discovery does not seem adapted to obtaining a discovery from a corporation. Hatcher v. Bank, 79 Ga. 540; s. c., 5 S. E. Rep. 127.]

**The Code of Practice.**

**TITLE IX. OF EXECUTIONS.**

**Levy on stock.**

§ 5430. Shares in a bank or other corporation may be levied on and sold, either under attachment or fi. fa., in any county where the corporation does business — notice of such levy being given to the defendant, if his residence be known, and also the officers or agent of the corporation in the county where the levy is made. Upon demand by any sheriff, constable, or other levying officer of this State, having in his hands any execution or attachment against any person who is the owner of any shares or stock of said bank or joint-stock company, upon the president, superintendent, manager, or other officer of any corporation or joint-stock company having access to the books thereof, said president, superintendent, manager, or other officer aforesaid shall disclose to said levying officer the number of shares and the par value thereof owned by the defendant in said execution or attachment, and on refusal to do so, shall be considered in contempt of court and punished accordingly. (Code 1882, § 2626, in part, as amended by Act 1894, December 17.)

**How sold.**

§ 5431. Such sales shall be made only by the sheriff or his deputy, and constables levying thereon shall turn over such levies to the sheriff. Only one share shall be sold at once. The sheriff shall give the purchaser a certificate of his purchase, which, on presentation to the officers of the corporation, shall authorize a transfer of the stock to him. Transfers of stock after levy of an attachment, or after judgment, and with notice to the corporation of the levy or judgment, are absolutely void. If the shares be in a railroad, canal, turnpike, or plank-road company, they may be levied on and sold in any county through which the same passes. (Id.)

[Where stock is attached and sold at sheriff's sale, it is duty of proper officer of corporation to make necessary transfer on books of company. If he refuses to do so, mandamus is the proper proceeding. Bailey v. Stohecker, 38 Ga. 259.]

## Crimes — Penal Code, §§ 123-129.

tere transfer of stock on books by an officer of company will not make company liable as guar- or of vendor's title to the stock. Nutting v. Omasson, 46 Ga. 34. Stock held as collateral is subject to attachment. Le v. Montgomery, 73 Ga. 337. Purchaser of stock at sheriff's sale with notice purchases such interest as corporation has. Tuttle v. Walton, 1 Ga. 43. Stock in a corporation is not subject to be levied on, under attachment against owner of stock. Haley v. Id, 16 Ga. 437.]

**The Penal Code.****CRIMES AND THEIR PUNISHMENTS.**

- 123. Unlawfully preventing laborers, etc.
- 124. Conspiring or attempting to prevent.
- 125. Hindering persons who desire to labor.
- 126. Hindering owner from working property or hiring laborers.
- 127. Employers of females must provide seats.
- 128. Preventing or attempting to prevent re-employment.
- 129. Liability of corporation for permitting violations of this article.
- 212. Use or borrowing by officer or agent of corporation.
- 213. Loans by officer to another without permission.
- 594. Inspection of list of shareholders.
- 691. Improper dividends.
- 938. Process against corporations and mode of trial.

**Unlawfully preventing laborers, etc.**

§ 123. If any person or persons, by threats, violence, intimidation or other unlawful means, shall prevent or attempt to prevent any person or persons in this State from engaging in, remaining in, or performing the business, labor or duties of any lawful employment or occupation, such offender or offenders shall be guilty of a misdemeanor. (L. 1887, p. 107.)

**Conspiring or attempting to prevent.**

§ 124. If any person or persons, singly or together, or in combination, shall conspire to prevent or attempt to prevent any person or persons, by threats, violence or intimidation, from engaging in, remaining in, performing the business, labor, or duties of any lawful employment or occupation, such offender or offenders shall be guilty of a misdemeanor. (Id.)

**Hindering persons who desire to labor, etc.**

§ 125. If any person or persons, singly or conspiring together, shall hinder any person or persons who desire to labor from doing, or hinder any person, by threats, violence or intimidation, from being employed as laborer or employee, such offender shall be guilty of a misdemeanor. (Id.)

**Hindering owner from working property or hiring laborers.**

§ 126. If any person or persons, by threats, violence, intimidation or other unlawful means, shall hinder the owner, manager or

proprietor for the time being from controlling, using, operating or working any property in any lawful occupation, or shall by such means hinder such person from hiring or employing laborers or employees, such offender or offenders shall be guilty of a misdemeanor. (Id.)

**Employers of females must provide seats.**

§ 127. All persons and corporations employing females in manufacturing, mechanical or mercantile establishments, must provide suitable seats, and permit their use by such females when not necessarily engaged in the active duties for which they were employed. Any person who shall fail to comply with the requirements of this section, and the officers of any corporation which shall fail to comply with said requirements, shall be guilty of a misdemeanor. (L. 1889, p. 167; L. 1895, p. 63.)

**Preventing or attempting to prevent re-employment.**

§ 128. If any railroad corporation or company or other corporation doing business in this State, or any agent or employer of any such company or corporation, after having discharged any employee from the service of any such company or corporation, shall prevent or attempt to prevent by word, writing, sign or other means, directly or indirectly, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent, employer, company or corporation, shall be guilty of a misdemeanor, and shall be liable in penal damages to such discharged person, to be recovered by civil action; but this section shall not be construed as prohibiting any person, agent, employer, company or corporation from giving in writing any other person, company or corporation to whom such discharged person has applied for employment, a truthful statement of the reasons for such discharge, and shall furnish to such discharged employee on his application, to such address as may be given by such discharged employee, within ten days of such application made as aforesaid, a true copy of any such written statement. (L. 1890-1, p. 185; L. 1895, p. 63.)

**Liability of corporation for permitting violation of this article.**

§ 129. If any railroad or railway company or corporation, or other corporation doing business in this State, shall authorize or permit, with its knowledge and consent, any of its or their officers, agents or employers\* to commit either or any of the acts prohibited in this article (except as in this article provided), such company or corporation shall be liable in treble damages to such employee so prevented from obtaining employment, to be recovered by him in civil action. (Id.)

\*So in Code.

## Crimes — Penal Code, §§ 212, 213, 594, 691, 938.

**Use or borrowing by officer or agent of corporation.**

§ 212. Any officer or agent of any bank or other corporation who shall use or borrow for himself, directly or indirectly, any money or other property belonging to any bank or other corporation of which he is an officer or agent without the permission of a majority of the board of directors, or of a committee of the board authorized to act shall be guilty of a misdemeanor. (Act 1887, September 5.)

**Loans by officer to another without permission.**

§ 213. Any officer or agent of any bank or other corporation who shall lend the money or property of said bank or corporation to another agent or officer thereof without the permission of a majority of the board of directors, or of a committee authorized to act, shall be guilty of a misdemeanor; Provided, nothing in this or the preceding section shall be held to relieve any officer so offending from the pains and penalties of any other violation of the penal laws of this State when the same is committed by means of using or borrowing the property of said corporation without the permission so required. (Id.)

**Inspection of list of shareholders.**

§ 594. If the president or other officer of such bank or other corporation in charge of the business of such bank or corporation at the time a demand is made as prescribed in § 1891 of the Civil Code, by a creditor of said bank or corporation within the business hours of any working day, shall fail or refuse to permit such creditor to inspect the list of the shareholders of such bank or corporation, he shall be guilty of a misdemeanor. (Act of 1894, December 18.)

See § 1891 of Code.

**Improper dividends.**

§ 691. No joint-stock company, corporation, or other association, shall declare any dividend or distribute any money among its members as profits, when such dividend or money is not the legitimate proceeds of its investments. Any president, director or other officer or agent of any joint-stock company, corporation or other association, violating the provisions of this section, shall be guilty of a misdemeanor. (Code 1882, §§ 4604a, 4604b.)

[Dividends on stock correspond to hire property. Purchaser of stock for an administrator at unauthorized sale, liable for dividends, with interest thereon. Nutting v. Thomasson, 57 Ga. 418.

Dividends treated as lost, are those innocently paid by corporation, whether to purchaser himself or those holding under him. Id. Payments to transferees are all innocent, unless corporation is chargeable with negligence or breach of faith, in suffering transfers to be made. Id.

Timely notice to corporation by purchaser of stock would hold dividend for him. Phinizy v. Murray, 83 Ga. 748; s. c., 10 S. E. Rep. 358.

To agree to amount of accruing dividend not same as to agree to pay interest on amount of stock, even though rate be the same. R. R. Co. v. Papot, 67 Ga. 676. Dividends presumed to follow stock. Id.

Dividends paid by mistake recoverable. Id.

The right of pledge to recover dividends on the stock pledged, determined. Armour v. E. Rome Town Co., 25 S. E. Rep. 504.

Whether the action of a corporation in rescinding a resolution declaring a dividend was or was not valid, if in a resolution declaring a new dividend it was expressly stated that it was to be in lieu of the former, and if a stockholder accepted such latter dividend, with knowledge of the terms of such resolution, he is estopped from recovering the first. Albany Fertilizer Co. v. Arnold, 103 Ga. 145; 29 S. E. Rep. 695 (1897).]

**Process against corporations, and mode of trial.**

§ 938. Whenever an indictment or special presentment against a corporation doing business in this State is returned, or filed in any court in this State having jurisdiction of the offense, the clerk of said court shall issue an original and copy notice to the defendant corporation of the filing of such indictment or special presentment, which copy notice shall be served by a sheriff upon any officer of such corporation to be found in his county; and if there be no such officer in his county, then upon any agent of such corporation; and the sheriff serving such copy notice shall make an entry of such service on the original notice, and return the same to the court from which it is issued, and such service shall be service upon the corporation, and the indictment or special presentment shall, upon the return of said notice executed as provided in this section, stand for trial. On the trial, if the defendant corporation fails to appear, or appearing fails to plead, the judge shall cause to be entered a plea of not guilty, and the trial shall proceed as though the defendant had appeared and pleaded. Upon the conviction of any corporation in any such trial, there shall be rendered against it a judgment for the fine imposed, together with the costs of the prosecution, upon which judgment and execution shall issue against the property of the defendant.

Trusts and pools — L. 1896; sale of franchises — L. 1897.

### LEGISLATIVE ACTS SUBSEQUENT TO 1895.

#### Trusts and pools.

Judicial sale of franchises of insolvent corporation.

Payment of wages due to widow of deceased employee.

Protection of trade-marks.

#### Act 1.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations, made with a view to lessen or which tend to lessen, free competition in the importation or sale of articles imported into this State; or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or articles; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this act; to prohibit every foreign corporation, violating any of the provisions of this act, from doing business in his State; to require the attorney-general of this State to institute legal proceedings against any such corporations violating the provisions of this act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation, damaged by any such trust, agreement, or combination, to sue for the recovery of such damages, and for other purposes.

Section 1. Be it enacted by the general assembly of Georgia, and it is hereby enacted by the authority of the same, That from and after the passage of this act all arrangements, contracts, agreements, trusts, combinations between persons or corporations made with a view to lessen, or which tend to lessen full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

2. Be it further enacted by the authority aforesaid, That any corporation, chartered under the laws of this State, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereon cease and determine. Every foreign

corporation which shall violate any of the provisions of this act is hereby denied the right to do, and is prohibited from doing business in this State. It is hereby made the duty of the attorney-general of this State to enforce this provision by due process of law.

§ 3. Be it further enacted by the authority aforesaid, That any violation of the provisions of this act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall on conviction, be punished by a fine of not less than one hundred dollars or more than five hundred dollars, and by imprisonment in the penitentiary not less than one year or\* nor more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. Be it further enacted by the authority aforesaid, That the provisions of this act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. Be it further enacted by the authority aforesaid, That any person or persons, or corporations, that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section one of this act may sue for and recover in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust.

§ 6. Be it further enacted by the authority aforesaid, That it shall be the duty of the judges of the superior courts of this State specially to instruct the grand juries as to the provisions of this act.

§ 7. Be it further enacted by the authority aforesaid, That all laws and parts of laws in conflict with the provisions of this act be, and the same are, hereby repealed.

(Approved December 23, 1896.)

#### Act 2.

AN ACT authorizing a judicial sale of the franchises of insolvent private corporations, providing for the incorporation of the purchaser or purchasers of such franchise, and for other purposes.

Section 1. Be it enacted by the general assembly of the State of Georgia, That whenever any private corporation heretofore or

\* So in session laws.

## Garnishment — L. 1898; trade-marks — L. 1898.

hereafter created under any general or special law of this State shall become insolvent, and its assets be the subject of administration by the court, the franchises possessed and enjoyed by such corporation in virtue of its charter or order of incorporation shall be considered assets, and the same may be sold, under order of the court, through a receiver or otherwise.

§ 2. Be it further enacted, That the purchaser or purchasers of such franchises, their associates, successors and assigns, shall, upon complying with the requirements of this act, have and acquire, and may thereafter exercise and enjoy the same rights, privileges, immunities and advantages conferred in the charter or order of incorporation of such insolvent corporation, as fully and absolutely, in all respects, as the former company might or could have had and enjoyed the same had no such sale and purchase taken place; Provided, That nothing in this act shall be construed to reserve to such purchaser or purchasers any exemption from State, county or municipal taxation, or any special rights, privileges or immunities, inconsistent with the constitution of this State.

§ 3. Be it further enacted, That such purchasers, their associates and assigns, may organize anew in the manner prescribed by law.

§ 4. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

(Approved December 21, 1897.)

**Act 3.**

(L. 1898, No. 25.)

AN ACT to make lawful that upon the death of employees of railroad, express, street railroads, steamboats or navigation companies, factories and machine shops, whatever wages that are not subject to garnishment, that may be due such employee, shall be paid to the widow of such employee without administration upon his estate.

Section 1. Be it further enacted by the general assembly, and it is hereby enacted by authority of the same, That from and after the passage of this act, it shall be lawful upon the death of any person employed by any railroad company, express, street railroads, steamboats or navigation companies, compress companies, factories, machine shops or other corporations or persons, who may have wages due him by said company or companies, factory or machine shops or other corporations or persons, for said company or companies to pay over to the widow or widows, minors or guardians of said employee, or employees, whatever wages there may be due the deceased, to the amount due, not to exceed one hundred dollars, without any administration upon his estate for this purpose.

§ 2. Be it further enacted, That all laws and part of laws in conflict with this act be, and the same are, hereby repealed.

(Approved December 6, 1898.)

**Act 4.**

(L. 1898, No. 86.)

AN ACT for the protection of labels, trademarks, seals, names, trade-names and forms of advertisement, and providing penalties for imitating or counterfeiting the same, and for other purposes.

Section 1. Be it enacted by the general assembly of the State of Georgia, That whenever any person, firm, corporation or association shall adopt and use in their business, for their protection, any label, trade-mark, trade-name, or form of advertisement, it shall be unlawful for any person, firm, corporation or association to counterfeit or imitate such label, trade-mark, trade-name or form of advertisement, with intent to use the same for the purpose of deceiving the public in the sale of goods. Every person violating this section shall be guilty of a misdemeanor, and punished therefor.

§ 2. Be it further enacted, That every person, firm, corporation or association who shall use any counterfeit or imitation of any label, trade-mark, trade-name, or form of advertisement of any person, firm, corporation or association, knowing the same to be counterfeit or imitation, shall be guilty of a misdemeanor, and punished therefor.

§ 3. Every person, firm, corporation, or association, who shall use or display the genuine label, trade-mark, trade-name or form of advertisement of any person, firm, corporation or association, in any manner not authorized by law, such person, firm, corporation or association, knowing that such use is not authorized, with intent to deceive the public in the sale of goods, shall be guilty of a misdemeanor, and be punished therefor.

§ 4. Be it further enacted, That any firm, person, corporation or association, who shall use the name or seal of any other person, firm, corporation or association, in and about the sale of goods or otherwise, not being authorized to use the same, knowing that such use is unauthorized, with intent to deceive the public in the sale of goods, shall be guilty of a misdemeanor, and punished therefor.

§ 5. Be it further enacted, That any person, firm, corporation or association, that shall be found guilty of violating the provisions of this act, or any of them as aforesaid, shall be punished as prescribed in section 1039 of volume 3 of the Code of 1895.

§ 6. That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

(Approved December 20, 1898.)

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IDAHO.

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# IDAHO.

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## LAWS OF 1899.

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### Qualification of Incorporators.

AN ACT approved February 28, 1899, amended section 2576 to read as follows:

§ 2576. Private corporations may be formed by the voluntary association of any five or more persons in the manner prescribed in this title; Provided, One of such persons must be a bona fide resident of this State.

See Anno. Corp. L., Idaho, p. 9.

### Personal Liability.

AN ACT approved February 6, 1899, amended section 2609 of the Revised Statutes to read as follows:

§ 2609. Each stockholder of a corporation is individually and personally liable for its debts and liabilities to the full amount unpaid upon the par or face value of the stock or shares owned by him. Any creditor of the corporation may institute actions against any of its stockholders jointly or severally, and in such action the court must determine the amount unpaid upon the stock held or owned by each defendant, and a several judgment must be entered against him for a sum not exceeding such amount; and nothing in this title must be construed to render any stockholder individually or personally liable, as such stockholder, for debts or liabilities of the corporation, either at the suit of a creditor or for assessments or calls, to an amount exceeding the balance unpaid upon his stock, or the difference between the amount that has been actually paid upon his stock and the par or face value thereof, except when so liable on the ground of fraud or misrepresentation, or concealment, or for neglect or misconduct as an officer, agent, stockholder, or member of the corporation; and no corporation shall issue any stock as paid up, in whole or in part, or credit any amount, assessment or calls as paid upon any of its stock, except for money, property, labor or services actually received by the corporation, or actually paid upon the indebtedness of the corporation as provided in this section, to the full value of the amount credited upon such stock. If any stockholder of any insolvent corporation pays the full amount unpaid upon the stock held by him, as above defined, upon the overdue debts of the corporation, incurred while he was such stock-

holder, he is relieved from any further personal liability upon his stock, but not from any liability for fraud, neglect or misconduct. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred by the corporation; and such liability is not released or discharged by any subsequent transfer of stock. When such liability does not arise upon contract it shall be deemed to be incurred when judgment therefor is obtained against the corporation. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and, also, to every person who has advanced the installments or purchase money, or subscribed for stock, in the name of a minor, so long as the latter remains a minor; and, also, to every guardian or trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee are not liable under the provisions of this section, by reason of any such investment; nor is the person for whose benefit such investment is made responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period, or while the investment continues. Stock held as collateral security, or by a trustee who is not the beneficial owner, or in any other representative capacity without a beneficial interest, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation, but the pledgor, or person, or estate represented is to be deemed the stockholder, as respects such liability. Members of corporations not organized for profit and having no capital stock are not individually or personally liable for its debts or liabilities, unless such liability is imposed by the by-laws of the corporation, and then only to the extent so imposed; any such liability may be enforced, to the extent imposed by the by-laws, by joint or several actions against members, as before provided. The liability of each stockholder of a corporation not formed under the laws of this State, but doing business within the State, is the same

## IDAHO.

## Summons; aliens.

as the liability of stockholders of corporations organized under the laws of this State.

See Anno. Corp. L., Idaho, p. 13.

§ 2. All corporations doing business in this State, whether organized under the laws of this State or some other State, desiring to avail themselves of the provisions of this act, shall cause to be written or printed after the corporate name, on its stock certificates, letter and bill heads, and all its official documents, the word "limited;" also, after the corporate signature to all official or public documents, the word "limited."

## Service of Summons.

AN ACT approved February 15, 1899, amended section 4144 of Revised Statutes to read as follows:

§ 4144. The summons must be served by delivering a copy thereof as follows:

First. If the suit is against a corporation formed under the laws of this State to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

Second. If the suit is against a foreign corporation, or a non-resident joint-stock company or association doing business and having a managing or business agent, cashier, or secretary within this State to such agent, cashier, or secretary, or to any station, ticket, or other agent of such corporation transacting business thereof in the county where the action is commenced, and if there is no such agent in said county, then service may be had upon any such agent in any other county;

Third. And whenever any foreign corporation or non-resident joint-stock company or association, doing business within the State of Idaho, shall not have any designated person actually residing in the county in which said corporation or joint-stock company shall be doing business within this State upon whom process issued by authority of or under any law of this State may be served as provided in section 2653 of the Revised Statutes of Idaho, or when any such corporation or joint-stock company having appointed such person or agent as provided in said section 2653, and said agent or person so designated, shall have removed from, or ceased to be a resident, or be absent for more than thirty (30) days from said county, then the auditor of said county shall be and is hereby designated as the authorized agent of said corporation or joint-stock company upon whom process issued by authority of or under any law of this State may be served with like effect as though said service were made upon the agent or person appointed or designated as provided in section 2653 of the Revised Statutes of Idaho;

Fourth. If against a minor under the age of fourteen years residing within this State, to such minor personally, and also to his father, mother, or guardian, or if there be

none within this State, then to any person having the care or control of such minor or with whom he resides or in whose service he is employed;

Fifth. If against a person residing in this State who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person and also to his guardian;

Sixth. If against a county, city or town, to the chairman of the board of commissioners, president of the council, or trustee or other head of the legislative department thereof;

Seventh. In all other cases, to the defendant personally.

See Anno. Corp. L., Idaho, p. 19.

## Rights of Aliens to Acquire Real Estate.

AN ACT approved February 2, 1899, is as follows:

Section 1. No person other than a citizen of the United States, or one who has declared his intention to become such, nor any association or corporation, except railway corporations, whose members are not exclusively citizens of the United States, or persons who have declared their intention to become such, shall hereafter acquire any land, or title thereto, or interest therein, other than mineral lands, or such as may be necessary for the actual working of mines and the reduction of the products thereof: Provided, That no person not eligible to become a citizen of the United States shall acquire title to any land or real property within this State, except as hereinafter provided: Provided, further, This act shall not prevent the holders (whether aliens or non-residents, corporations or associations) of liens upon real estate, or any interest therein, heretofore or hereafter acquired, from holding or taking a valid title to the real estate in the enforcement of such lien; nor shall it prevent any such alien, association or corporation from enforcing any lien or judgment for any debt or liability now existing, or which may be hereafter created, nor from becoming a purchaser at any sale made for the purpose of collecting or enforcing the collection of such debt or judgment; nor from preventing widows or heirs who are aliens, or who have not declared their intention to become citizens, from holding lands by inheritance; but all lands acquired as aforesaid shall be sold within five years after the title thereto shall be perfected in such alien, association or corporation, and in default of such sale, within such time, such real estate shall revert and escheat to the State of Idaho. The provisions of this act shall not be construed in any way to prevent or interfere with the ownership of mining land, or land necessary for the working of mines or the reduction of the products thereof.

## Decisions.

§ 2. Any person, whether citizen or alien, (except as hereinafter provided) natural or artificial, may take, hold and dispose of mining claims and mining property, real or personal, tunnel rights, mill sites, quartz mills and reduction works used or necessary or proper for the reduction of ores, and water rights used for mining or milling purposes, and any other lands or property necessary for the working of mines or the reduction of the products thereof: Provided, That Chinese, or persons of Mongolian descent not born in the United States, are not permitted to acquire title to land or any real property under the provisions of this act.

§ 3. No person not a citizen of the United States, or who has not declared his intention to become such, or who is not eligible to become such, shall be employed upon any State or municipal works; nor shall any such person be employed by any contractor to work on any public works of the State or any municipality: Provided, That any State prisoner may be employed within the State prison grounds and as provided in section 3, article 13, of the Constitution.

§ 4. Any person who shall violate any of the provisions of section one of this act, on conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each person so employed, or by imprisonment in the county jail until such fine be paid, or until discharge as provided by law.

§ 5. It shall hereafter be unlawful for any county government or municipal or private corporation organized under the laws of this State, or organized under the laws of another State or territory or in a foreign country and doing business in this State, to give employ-

ment in any way to any alien who has failed, neglected, or refused, prior to the time such employment is given, to become naturalized or declare his intention to become a citizen of the United States.

§ 6. Whenever employment has been innocently given to any alien by any county government, municipal or private corporation mentioned in section 1 of this act, and complaint shall be made in writing by any person to the officers of the county government, or municipal corporation, or general managers, superintendent, foreman, or other agent of the private corporation, having charge or superintendency of the labor of such alien employee, that such employee is an alien, he shall forthwith discharge such employee from employment, unless said employee shall produce his declaration to become a citizen, or his certificate of naturalization, or a duly certified copy thereof.

§ 7. Any public officer or any county government, or municipal corporation, or any general manager, superintendent, foreman, or other agent of any private corporation, or any contractor or agent of any company engaged in public work, who shall violate any of the provisions mentioned in this act, who shall knowingly give employment to any alien, or who, having innocently given such employment, shall, on complaint being made to him by any person, fail or refuse to discharge any such employee forthwith on the failure or refusal of such employee to produce for his inspection and the inspection of the complainant his declaration of intentions to become a citizen, or certificate of naturalization as provided in section 2 of this act, shall be deemed guilty of a misdemeanor.

See Anno. Corp. L., Idaho, p. 23.

## DECISIONS.

(Include 58 Pac. Rep. 192.)

**Receivers.**

Where a corporation passes into the hands of a receiver, it should not join in an action by the receiver for money due him. Idaho Gold Reduction Co. v. Croghan, Sup. Ct. Idaho, 56 Pac. Rep. 164 (1899).

When receiver may be appointed. Anno. Corp. L., Idaho, p. 19.

**Dissolution.**

Upon dissolution, a distribution by the

court of part of the assets in specie among certain stockholders, without any finding as to the value of the same, and a decree for the sale of the balance of the property, and a distribution of the proceeds of the sale, upon the basis of a copartnership. Held, error, as not conforming to section 4330 of the Revised Statutes. Clow v. Redman, Sup. Ct., Idaho, 57 Pac. Rep. 437 (1899).

Dissolution: Anno. Corp. L., Idaho, p. 20.







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ILLINOIS.

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# ILLINOIS.

## LAWS OF 1898 (SPECIAL SESSION).

### Taxation.

AN ACT for the assessment of property and providing the means therefor, and to repeal a certain act therein named.

Section 1. Be it enacted by the People of the State of Illinois, represented in General Assembly, \* \* \*

§ 8. All property subject to taxation shall be listed by the person at the place and in the manner required by law, and assessed at the place in the manner required by law with reference to the ownership, amount, kind and value on the first day of April in the year for which the property is required to be listed, including all property purchased on that day. The owner of property on the first day of April in any year shall be liable for the taxes of that year. The purchaser of property on the first day of April shall be considered as the owner on that day.

§ 17. The assessor shall furnish to each person required to list personal property a printed blank schedule, forms to be furnished by the auditor of public accounts, upon which shall be printed a notice substantially as follows:

"This schedule must be filled out, sworn to and returned to me in person or by mail at ..... (address) ..... on or before ..... You are to give a full, fair cash value of the articles mentioned as well as the amount of money required to be returned. Only one-fifth of the several amounts will be taken and assessed for the purpose of taxation.

(Signature) . . . . .  
Assessor."

There shall also be printed upon such blank the schedule now required by law, and the following, which is a part of this section.

And every person required to list personal property or money shall fill out, subscribe and swear to, and return to the assessor, in person or by mail, at the time required, such schedule in accordance with law, giving the numbers, amounts, quantity and quality of all the articles enumerated in said schedule by him possessed, or under his control, required to be listed by him for taxation. The assessor shall determine and fix the fair cash value of all items of personal property,

including all grain on hand on the first day of April, and set down the same, as well as the amounts of notes, accounts, bonds and moneys, in a column headed "full value," and ascertain and assess the same at one-fifth part thereof, and set down said one-fifth part thereof in a column headed "assessed value," which last amount shall be the assessed value thereof for all purposes of taxation. The assessor, or some person authorized by law to administer an oath, shall administer the oath required in this section.

§ 18. Personal property shall be valued at its fair cash value less such deductions as may be allowed by law to be made from credits, which value shall be set down in one column, to be headed "full value," and one-fifth part thereof shall be ascertained and set down in another column, which shall be headed "assessed value."

Real property shall be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale in the due course of trade, which shall be set down in one column, to be headed "full value," and one-fifth part thereof shall be set down in another column, which shall be headed "assessed value."

The State board of equalization, in valuing property assessed by them, shall ascertain and determine respectively the fair cash value of such property, which fair cash value shall be set down in one column, to be headed "full value," and one-fifth part thereof shall be ascertained and set down in another column, which shall be headed "assessed value."

The one-fifth value of all property so ascertained and set down shall be the assessed value for all purposes of taxation, limitation of taxation and limitation of indebtedness prescribed in the constitution or any statute.

§ 19. The assessor shall require every person to make, sign, and swear to the schedule provided for by this act. If any person shall refuse to make the schedule herein required, or to subscribe and swear to the same, the assessor shall list the property of such person according to his best knowledge, information and judgment, at its fair cash value, and shall add to the valuation of such list an amount equal to fifty per cent. of such valuation.

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Taxation.

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Whoever in making such schedule shall wilfully swear falsely in any material matter, shall be guilty of perjury and punished accordingly.

§ 34. The board of review shall meet on or before the second Monday in July in each year for the purpose of revising the assessment of property. At such meeting the board of review, upon application of any taxpayer or upon their own motion, may revise the entire assessment or any part thereof of any taxpayer, and correct the same as shall ap-

pear to them to be just, but in none of the cases provided for in this act shall the assessment of the property of any person be increased unless such person or his agent, if either be resident or has a place of business in the county, shall first have been notified in writing and been given an opportunity to be heard. Such meeting may be adjourned from day to day as may be necessary.

(Approved February 25, 1898.)

## LAWS OF 1899.

**Annual report to the secretary of State.****Fees for incorporation.****Foreign corporations may acquire railroad or toll-bridge.****Foreign corporations, designation of agents, etc.****Free employment agencies in certain cities.****Deception and unlawful force in procuring employees.****Annual Report to the Secretary of State.**

- § 1. Requiring corporations to report annually to secretary of State — exceptions — fee for filing.
2. Secretary of State to mail blanks.
3. Report to be signed and sworn to by officers of corporation or assignee.
4. Cancellation of articles of incorporation for failure to report in sixty days.
5. Secretary of State to send certified copy of reports to recorders of deeds.
6. Repeals all inconsistent acts.

**AN ACT** requiring corporations to make annual report to the secretary of State and providing for the cancellation of articles of incorporation for failure to do so.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That every incorporated company, other than railroad, banking, building and loan, and insurance companies, existing by virtue of any general or special law of this State, or hereafter organized by virtue of any law of this State, shall annually, between the fifteenth day of August and the first day of September, report to the secretary of State the location of its principal business office in this State, with town, street and number, and the kind of business then engaged in; the names of its officers and directors or managers, their residence with town, street and number, and the date of the expiration of their respective terms of office; and whether it is pursuing an active business under its charter; which report, together with a fee of one dollar for filing same, shall be sent to the secretary of State, in whose office said report shall be filed.

§ 2. The secretary of State is hereby required, on or before the fifteenth day of August in each year, to send by mail to every corporation described in section one of this act, of which he has cognizance, blanks to be used in making the report provided for in this act; but no corporation to which this act applies shall be held to be excused from making the report herein required by reason of failure to receive the

blanks provided to be supplied by the secretary of State.

§ 2.\* Said report shall be signed and sworn to before an officer authorized to administer oaths, by the president or secretary of said corporation, under the seal thereof. And in case said corporation is in the hands of an assignee or receiver, then such report shall be signed and sworn to by said assignee or receiver.

§ 4. Every corporation to which this act applies, failing within sixty days from September first in each year to make the report herein provided for, shall be entered as delinquent in a record kept for that purpose, and the secretary of State shall at the earliest practicable date therefrom send by mail to such corporation and to its officers and directors at their last known addresses, as shown by the records in the office of the secretary of State, a notice that it is delinquent in the matter of making report as herein provided, together with blanks to be used in making such report, and a failure on the part of such corporation to make said report within thirty days from the mailing of said notice shall be prima facie evidence that the corporation is defunct and out of existence, and the secretary of State shall enter upon the records of his office the cancellation of the articles of incorporation of such corporation.

§ 5. The secretary of State is hereby required to annually, as soon as a complete list of corporations authorized to do business under the laws of the State of Illinois is obtainable, to send to the recorder of deeds in each of the several counties in this State a certified copy of said list of corporations together with the names of their officers and directors or managers, the location of its principal business office in this State, with town, street and number, which list shall be by the said recorder of deeds filed away in their respective offices for public reference.

§ 6. All acts and parts of acts inconsistent with this act, are hereby repealed.

(Approved April 21, 1899.)

**Fees for Incorporation.**

**AN ACT** to amend section one of an act entitled, "An act regarding fees for incorporation and the increase of capital stock of companies and corporations in this State," approved June 15, 1895, in force July 1, 1895.

Section 1. Be it enacted by the People of the State of Illinois, represented in the Gen-

\* So in session laws.

## Incorporation fees; foreign corporation.

eral Assembly: That section 1 of an act entitled, "An act regarding fees for the incorporation and the increase of capital stock of companies and corporations of this State," approved June 15, 1895, be amended so as to read as follows:

§ 1. That all companies and corporations hereafter organized under the laws of the State of Illinois shall pay to the secretary of State, before there shall issue a license to incorporate the same, fees as follows: All companies having a capital stock of \$2,500 and under shall pay the sum of \$30, and all companies having a capital stock of over \$2,500 and not over \$5,000 shall pay the sum of \$50, and all companies having a capital stock of over \$5,000 shall pay in addition to the said sum of \$50 the sum of \$1 for each \$1,000 of capital stock over \$5,000. All corporations at present organized and doing business under the laws of this State, or that may be organized in the future, that may hereafter increase their capital stock, shall pay as a fee in addition to all other fees at present required by law, the sum of \$1 for each \$1,000 of increase of such capital stock: Provided, That no company now incorporated or which may be hereafter incorporated under the laws of this State, shall acquire a franchise by increase of capital stock to \$5,000 for a less sum than \$50, and over \$5,000, in addition to the said sum of \$50, the sum of \$1 for each \$1,000 increase of capital stock, and \$1 for filing certificate of such increase: And provided further, That this act shall not apply to corporations incorporated under the law providing for the incorporation of homestead associations and building and loan associations, nor to religious associations, nor corporations not for pecuniary profit.

(Approved April 24, 1899.)

#### Foreign Corporations May Acquire Railroad or Toll-bridge.

AN ACT concerning the rights, powers and duties of certain corporations therein mentioned, authorizing the sale and transfer of any railroad, or railroad and toll bridge, and other property, franchises, immunities, rights, powers and privileges connected therewith or in respect thereto, of any corporation of this State, to a corporation of another State, and prescribing the rights, powers, duties and obligations of the purchasing company.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: Whenever a corporation organized under the laws of another State shall be in possession of a railroad, or rail-

road and toll bridge, the whole or a part of which is situated in this State, belonging to a corporation organized or existing under the laws of this State, or shall own or control all of the capital stock of such corporation of this State, then the corporation of this State may sell and convey, and such corporation of another State, as above mentioned, may purchase in fee-simple or otherwise, all of such railroad and toll bridge, or all such railroad, or any part thereof, together with all the rights, powers, privileges, franchises, immunities and other property used in connection therewith or pertaining thereto, of the corporation of this State, upon such terms and conditions as may be agreed upon between the board of directors of the respective companies; and thereupon and thereafter the railroad company so purchasing shall hold in fee-simple or otherwise and forever use and enjoy the property so purchased, and may exercise the powers, privileges, immunities and franchises of the corporation whose property is so purchased, and may, when necessary or proper, exercise in the same manner as railroad corporations of this State are authorized to, the power of eminent domain in acquiring lands, or property necessary or convenient for the betterment, maintenance, extension or operation of such railroad, and for the construction, use and maintenance of spurs, switches, sidetracks, depots, stations, terminals and other facilities to be used in connection with such railroad: Provided, however, Said sale and purchase shall be approved by the stockholders owning not less than two-thirds in amount of the capital stock of the respective companies becoming parties to such purchase and sale, and such approval may be given at any annual or special meeting upon sixty days' notice being given to all the shareholders of the question to be acted upon by publication in some newspaper published in the county or counties where the principal office or place of business of the company or companies existing under the laws of this State may be situated or located. Provided further, That the railroad company or corporation which purchases any railroad, or railroad and toll bridge in this State shall operate such railroad, or railroad and toll bridge situated within this State, and hold such property situated within this State and the franchises so acquired, subject to all the rights, powers, privileges, duties and obligations prescribed by the general railroad laws of this State for the regulation, government, taxation or control of railroads organized, or which may be organized, under the laws of this State: And, provided, further, That this act shall not be construed so as to permit any railroad company to purchase any parallel or competing line of railroad in this State.

(Approved April 21, 1899.)

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## Foreign corporations.

### Foreign Corporations.

- § 1. Amends Act of 1897.
2. To maintain a public office in this State — to designate some person on whom legal process may be had — mortgages.
3. Incorporation papers filed with the secretary of State — incorporation fees.
4. Penalty for failure to comply with provisions of this act — duties of secretary of State.

AN ACT to amend an act entitled "An act to require every foreign corporation doing business in this State to have a public office or place in this State at which to transact its business, subjecting to a certain condition, and requiring it to file its articles or charter of incorporation with the secretary of State, and to pay certain taxes and fees thereon," approved May 26, 1897, in force July 1, 1897.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That an act entitled, "An act to require every foreign corporation doing business in this State to have a public office or place in this State at which to transact its business, subjecting it to a certain condition and requiring it to file its articles or charter of incorporation with the secretary of State, and to pay certain taxes and fees thereon," be, and the same is hereby, amended to read as follows:

§ 2. Every corporation for pecuniary profit formed in any other State, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein, if already established, shall designate some person as its agent or representative in this State on whom service of legal process may be had if desired; shall have and maintain a public office or place in this State for the transaction of its business, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign corporation established or maintained in any way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the laws of this State under which it may come, nor shall it hold any real estate except such as may be necessary and proper for carrying on its legitimate business. And no corporation incorporated under the laws of any other State, territory or country, doing business in this State, shall be permitted

to mortgage, pledge or otherwise incumber its real or personal property situated in this State to the injury or exclusion of any citizen or corporation of this State who is a creditor of such foreign corporation. And no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State until all its liabilities due to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished.

§ 3. Every company incorporated for purposes of gain under the laws of any other State, territory or country, now or hereafter doing business within this State, shall file in the office of the secretary of State a copy of its charter or articles of incorporation, or in case such company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which said original charter, articles or certificate may have been recorded. Such corporation, by its president, secretary or any officer thereof shall make and forward to the secretary of State, with the articles or certificate above provided for, a statement duly sworn to of the proportion of capital stock of the said corporation which is represented in the State of Illinois by its property located and business transacted therein and such statement shall further show the name and address of the agent or representative of said corporation in this State; and such corporation shall be required to pay into the office of the secretary of this State, upon the proportion of its capital stock represented by its property and business in Illinois, fees equal to those required of similar corporations formed within and under the laws of this State. Upon a compliance with the above provisions by said corporation, the secretary of State shall give a certificate that said corporation has duly complied with the laws of this State, and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Illinois; and such certificates shall be taken by all courts in this State as evidence that the said corporation is entitled to all the rights and benefits of this act, and such corporation shall enjoy those rights and benefits for the time set forth in its original charter or articles of association, unless this shall be for a greater length of time than is contemplated by the laws of this State, in which event the time and duration shall be the limit of time set out in the laws of this State. Such corporations having complied, as aforesaid, shall be required to promptly report to the secretary of State any change in the name and address of its agent or representative in this State, and any in-

## ILLINOIS.

### Free employment agencies.

crease or decrease in its capital stock, and any increase or decrease of the proportion of its capital stock represented in this State by its property and business therein, by filing in the office of the secretary of State a statement properly sworn to, setting forth the facts: Provided, That nothing in this act shall be taken or construed into releasing foreign loan, building and loan, bond investment, surety, or other corporations of like character from any provisions of law requiring them to make a deposit of money with the proper officer of the State to protect from loss the citizens of this State who may do business with such corporations: And, provided further, That the provisions of this act shall not apply to railroad or telegraph companies which have heretofore built their line of railway into or through this State, nor to insurance, banking or loaning companies.

§ 4. Every foreign corporation amenable to the provisions of this act which shall neglect or fail to comply with the conditions of the same as herein provided shall be subject to a fine of not less than \$1,000, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of State, as he may be advised that corporations are doing business in contravention of this act, to report the fact to the prosecuting attorney of the county in which such corporation is doing business, and the prosecuting attorney shall, as soon thereafter as is practicable, institute proceedings to recover the fine herein provided for, and his compensation therefor shall be ten per cent. of the amount recovered, the remainder to be paid into the revenue fund of the State; in addition to which penalty, on and after the going into effect of this act no foreign corporation as above defined which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort.

(Approved April 22, 1899.)

See Anno. Corp. L., Ill., p. 57, Act 1.

### Free Employment Agencies in Certain Cities.

- § 1. Creation in certain cities — number in each city — purpose — name.
2. Officers — how appointed — salaries.
3. Duties of superintendent — registers — form of — not open to public.
4. Superintendent to report to bureau of labor statistics each week — circulation of reports.
5. Superintendent to correspond with employers and advertise for employment — allow as \$400 for advertising.
6. Superintendent to make annual report to bureau of labor statistics.

- § 7. No fee charged applicants — penalty for receiving fee.
8. No employees to be furnished in case of strike or lockout.
9. Defines term "applicant for employment" and "applicant for help."
10. Private agencies to procure license — amount of license — bond — similarity of name to that of State agency prohibited — penalty for violation.
11. Grounds for removal of superintendent.
12. Secretary of State to furnish printing for agencies.

**AN ACT** to create free employment office in cities of certain designated populations, and to provide for the maintenance, management and control of the same, and to prevent private imitations of the name of the same and regulating private employment agencies.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That free employment offices are hereby created as follows: One in each city of not less than fifty thousand population, and three in each city containing a population of one million or over, for the purpose of receiving applications of persons seeking employment, and applications of persons seeking to employ labor. Such offices shall be designated and known as Illinois Free Employment Offices.

§ 2. Within sixty days after this act shall have been in force, the State board of commissioners of labor shall recommend, and the governor, with the advice and consent of the senate shall appoint a superintendent and assistant superintendent and a clerk for each of the offices created by section 1 of this act, and who shall devote their entire time to the duties of their respective offices. The assistant superintendent or the clerk shall in each case be a woman. The tenure of such appointment shall be two years, unless sooner removed for cause. The salary of each superintendent shall be \$1,200 per annum, the salary of such assistant superintendent shall be \$900 per annum. The salary of such clerks shall be \$800 per annum, which sums, together with proper amounts for defraying the necessary costs of equipping and maintaining the respective offices, shall be paid out of any funds in the State treasury not otherwise appropriated.

§ 3. The superintendent of each such free employment office shall within sixty days after appointment, open an office in such locality as shall have been agreed upon between such superintendent and the secretary of the bureau of labor statistics as being most appropriate for the purpose intended; such office to be provided with a sufficient number of rooms or apartments to enable him to provide, and he shall so provide, a separate room or apartment for the

## Free employment agencies.

use of women registering for situations or help. Upon the outside of each such office, in position and manner to secure the fullest public attention, shall be placed a sign which shall read in the English language, Illinois Free Employment Office, and the same shall appear either upon the outside windows or upon signs in such other languages as the location of each such office shall render advisable. The superintendent of each such free employment office shall receive and record in books kept for that purpose names of all persons applying for employment or help, designating opposite the name and address of each applicant the character of employment or help desired. Separate registers for applicants for employment shall be kept, showing the age, sex, nativity, trade or occupation of each applicant, the cause and duration of (non) employment, whether married or single, the number of dependent children, together with such other facts as may be required by the bureau of labor statistics to be used by said bureau; Provided, That no such special registers shall be open to public inspection at any time, and that such statistical and sociological data as the bureau of labor may require shall be held in confidence by said bureau, and so published as not to reveal the identity of any one: And provided further, That any applicant who shall decline to furnish answers to the questions contained in special registers shall not thereby forfeit any rights to any employment the office might secure.

§ 4. Each such superintendent shall report on Thursday of each week to the State bureau of labor statistics the number of applications for positions and for help received during the preceding week; also those unfilled applications remaining on the books at the beginning of the week. Such lists shall not contain the names or addresses of any applicants, but shall show the number of situations desired and the number of persons wanted at each specified trade or occupation. It shall also show the number and character of the positions secured during the preceding week. Upon receipt of these lists, and not later than Saturday of each week, the secretary of the said bureau of labor statistics shall cause to be printed a sheet showing separately and in combination the lists received from all such free employment offices; and he shall cause a sufficient number of such sheets to be printed to enable him to mail, and he shall so mail, on Saturday of each week, two of said sheets to each superintendent of a free employment office, one to be filed by said superintendent, and one to be conspicuously posted in each such office. A copy of such sheet shall also be mailed on each Saturday by the secretary of the State bureau of labor statistics to each State inspector of factories and each State inspector of mines. And it is hereby made the duty of said factory inspectors and

coal mine inspectors to do all they reasonably can to assist in securing situations for such applicants for work, and describe the character of work and cause of the scarcity of workmen, and to secure for the free employment offices, the co-operation of the employers of labor in factories and mines. It shall be the duty of such factory inspectors and coal mine inspectors to immediately notify the superintendent of free employment offices of any and all vacancies or opportunities for employment that shall come to their notice.

§ 5. It shall be the duty of each such superintendent of a free employment office to immediately put himself in communication with the principal manufacturers, merchants and other employers of labor and to use all diligence in securing the co-operation of the said employers of labor, with the purposes and objects of said employment offices. To this end it shall be competent for such superintendents to advertise in the columns of daily newspapers for such situations as he has applicants to fill, and he may advertise in a general way for the co-operation of large contractors and employers in such trade journals or special publications as reach such employers, whether such trade or special journals are published within the State of Illinois or not: Provided, That not more than four hundred dollars, or as much thereof as shall be necessary, shall be expended by the superintendent of any one such office for advertising any one year.

§ 6. It shall be the duty of each such superintendent to make report to the State bureau of labor statistics annually, not later than December first of each year, concerning the work of his office for the year ending October first of same year, together with a statement of the expenses of the same, including the charges of an interpreter when necessary, and such reports shall be published by the said bureau of labor statistics annually with its coal report. Each such superintendent shall also perform such other duties in the collection of statistics of labor as the secretary of the bureau of labor statistics may require.

§ 7. No fee or compensation shall be charged or received, directly or indirectly, from persons applying for employment or help through said free employment offices; and any superintendent, assistant superintendent or clerk, who shall accept, directly or indirectly, any fee or compensation from any applicant, or from his or her representative, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty-five nor more than fifty dollars and imprisoned in the county jail not more than thirty days.

§ 8. In no case shall the superintendent of any free employment office created by this act, furnish or cause to be furnished, workmen or other employes to any applicant for help whose employes are at that time on

## Employment of workmen.

strike, or locked out; nor shall any list of names and addresses of applicants for employment be shown to any employer whose employees are on strike or locked out; nor shall such list be exposed where it can be copied or used by an employer whose employees are on strike or locked out.

§ 9. The term "applicant for employment" as used in this act shall be construed to mean any person seeking work of any lawful character, and "applicant for help" shall mean any person or persons seeking help in any legitimate enterprise; and nothing in this act shall be construed to limit the meaning of the term "work" to manual occupation, but it shall include professional service, and any and all other legitimate services.

§ 10. No person, firm or corporations in the cities designated in section 1 of this act, shall open, operate or maintain a private employment agency for hire, or where a fee is charged to either applicants for employment or for help, without first having obtained a license from the secretary of State, which license shall be two hundred dollars per annum, and who shall be required to give a bond to the People of the State of Illinois in the penal sum of one thousand dollars for the faithful performance of the duties of private employment agent; and no such private agent shall print, publish, or paint on any sign, window, or newspaper publication, a name similar to that of the Illinois free employment offices. And any person, firm or corporation violating the provisions of this act, or any part thereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than one hundred dollars.

§ 11. Whenever, in the opinion of the board of commissioners of labor, the superintendent of any free employment office is not duly diligent or energetic in the performance of his duties, they may summon such superintendent to appear before them and show cause why he should not be recommended to the governor for removal, and unless such cause is clearly shown the said board may so recommend. In the consideration of such case in unexplained low percentage of positions secured to applicants for situations and help registered, lack of intelligent interest and application to the work, or a general inaptitude or inefficiency, shall be considered by said board a sufficient ground upon which to recommend a removal. And if, in the opinion of the governor, such lack of efficiency cannot be remedied by reproof and discipline, he shall remove as recommended by said board: Provided, That the governor may at any time remove any superintendent, assistant superintendent or clerk for cause.

§ 12. All such printing, blanks, blank books, stationery and postage as may be necessary for the proper conduct of the business of the offices herein created shall be furnished by the secretary of State upon requisition for the same made by the secre-

tary of the bureau of labor statistics. (Approved April 11, 1899.)

## Deception and Unlawful Force in Procuring Employees.

- § 1. Prohibits deception, false advertising, false pretenses and unlawful force in employing workmen.
2. Penalty for violating provisions of section 1.
3. Penalty for guarding with deadly weapons any workmen or property without a written permit from the governor; penalty; proviso.
4. Workmen; recovery of damages; attorney's fees.

AN ACT prohibiting the use of deception, misrepresentation, false advertising and false pretenses and unlawful force in procuring of employees to work in any department of labor, in this State and fixing penalties, criminal and civil, for violation thereof.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That it shall be unlawful for any person, persons, company, corporation, society, association or organization of any kind doing business in this State, by himself, themselves, his, its or their agents or attorneys, to induce, influence, persuade or engage workmen to change from one place to another in this State, or to bring workmen of any class or calling into this State to work in any of the departments of labor in this State, through or by means of false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or as to the existence or non-existence of a strike or other trouble pending between employer and employees, at the time of or prior to such engagement. Failure to state in any advertisement, proposal or contract for the employment of workmen that there is a strike, lockout or other labor troubles at the place of the proposed employment, when in fact such strike, lockout or other labor trouble then actually exists at such place, shall be deemed as false advertisement and misrepresentation for the purposes of this act.

§ 2. Any person or persons, company, corporation, society, association or organization of any kind doing business in this State, as well as his, their or its agents, attorneys, servants, or associates, found guilty of violating section 1 of this act, or any part thereof, shall be fined not exceeding \$2,000 or confined in the county jail not exceeding one year, or both, where the defendant or defendants is or are a natural person or persons.

## Decisions.

§ 3. Any person or persons who shall, in this or another State, hire, aid, abet or assist in hiring, through agencies or otherwise, persons to guard with arms or deadly weapons of any kind other persons or property in this State, or any person or persons who shall come into this State armed with deadly weapons of any kind for any such purpose, without a permit in writing from the governor of this State, shall be guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary not less than one year nor more than five years; Provided, That nothing contained in this act shall be construed to interfere with the right of any person, persons, or company, corporation, society, association or organization in guarding or protecting their private property or private interests as is now provided by law; but this act shall be construed only to apply in cases where workmen are brought into this State, or induced to go from one place to another in this State, by any false pretenses, false advertising or deceptive rep-

resentations, or brought into this State under arms, or removed from one place to another in this State under arms.

§ 4. Any workman of this State, or any workman of another State, who has or shall be influenced, induced or persuaded to engage with any persons mentioned in section 1 of this act, through or by means of any of the things therein prohibited, each of such workmen shall have a right of action for recovery of all damages that each such workman has sustained in consequence of the false or deceptive representations, false advertising, and false pretenses used to induce him to change his place of employment, against any person or persons, corporations, companies or associations directly or indirectly causing such damages; and, in addition to all actual damages such workmen may have sustained, shall be entitled to recover such reasonable attorney's fees as the court shall fix, to be taxed as costs in any judgment recovered.

(Approved April 24, 1899.)

## DECISIONS.

(Include 54 N. E. Rep. to p. 605.)

**Contracts by organizers of corporations.**

As between two persons who formed a corporation paying for all its stock with the property contributed by them, and holding all but two of the shares of the corporation, which were issued to their sons to give it enough stockholders to form a board of directors, they may be regarded as owners of its property, so as to make their contract for a division thereof enforceable as between them; but it is not binding on the corporation, which can be bound only by its board of directors. *Sellers v. Greer*, 172 Ill. 549; s. c., 50 N. E. Rep. 246.

**Reorganized corporations; rights of stockholders of original corporation.**

Where all persons interested in a reorganized corporation met, and distributed shares of stock, without reference to the amount contributed, parol evidence that at such meeting they agreed to reimburse the contributors, is admissible, in the absence of any resolution a minute action at a stockholders' or directors' meeting, to explain the minutes of a subsequent meeting showing a ratification of such agreement. A corporation issuing its stock without reference to the amount contributed, and bonds to all contributors except one, is under obligation

to reimburse such one for his contribution. When corporate stock is distributed without reference to the amount contributed, a contributor may recover reimbursements for his contribution, though he had received shares of stock, and had disposed of them.

In an accounting between a reorganized corporation and a stockholder of the original corporation for the value of his interest in the latter, the pendency of an action against the former for an alleged indebtedness of the latter is not alone sufficient to show that it was indebted. *Crown Coal & Iron Co. v. Thomas*, 177 Ill. 534; 52 N. E. Rep. 1042.

**Acts of officers, prima facie acts of corporations.**

When the president and treasurer of a corporation signed the corporate name of the company, by himself as president and treasurer, to a note containing a warrant of attorney to confess judgment, and placed the seal of the corporation thereon, the act was prima facie that of the corporation. *Anderson Transfer Co. v. Fuller*, 174 Ill. 221; 51 N. E. Rep. 251.

Where a judgment against a corporation on a note by confession under authority therein is opened to allow the defendant to plead, judgment may be rendered against the defendant on proof that the indebtedness

## Decisions.

was that of the company, and that the president had authority to make and deliver the note, even in the absence of proof that the president was authorized to execute the warrant of attorney therein to confess judgment. *Id.*

**Authority of officer.**

Where a corporation, by a course of dealing, has held out its treasurer to the public and those dealing with it, as clothed with full powers as general financial agent, such officer has implied authority to execute on its behalf, a judgment note, with warrant of attorney. *Chicago Tip & Tire Co. v. Chicago Nat. Bank*, 176 Ill. 224; s. c., 52 N. E. Rep. 52.

**Salary of president.**

A corporation is not liable to pay a salary to its president, unless it has been fixed by resolution or by-law of the board of directors. *St. Louis, A. & S. R. Co. v. O'Hara*, 177 Ill. 525; s. c., 52 N. E. Rep. 734.

**Acts of president presumed to be authorized.**

An act done by the president of a corporation pertaining to its business, will be presumed to have been authorized. *Anderson v. So. Chicago Brewing Co.*, 173 Ill. 213; s. c., 50 N. E. Rep. 655.

**Knowledge of president when not to bind corporation.**

Where one of a firm of real estate agents negotiating a loan, from which a large indebtedness to them from their client will be paid, is also the president of the corporation loaning the money, he does not represent the corporation so as to charge it with knowledge possessed by him that first mortgagees were to be paid out of the proceeds of the loan. *Seavers v. Presbyterian Hospital*, 173 Ill. 414; s. c., 50 N. E. Rep. 1079.

**Corporate powers; power to hold real estate.**

A corporation chartered for manufacturing railway cars purchased a lot in Chicago, on which it erected a building for its general offices, larger than its needs required, and rented such portions as were not then needed. The business of the company was increasing and the building was erected to accommodate its future needs. The company was authorized by its charter to purchase and hold such real estate as might be necessary for the prosecution of its business. It was held that the company, having the right to erect an office building, could erect such a one as would accommodate its needs in the future, and might rent such portions not presently needed, until the

future increase of business demanded them. Such a corporation is not authorized to purchase real estate on which it lays out a town with streets and alleys, sewerage, water and light systems and erect buildings for dwellings, schools, churches and business houses, in order to furnish homes and the conveniences and necessities of life to its employees, since such scheme was not necessary for the prosecution of its business. Nor has it power to run and operate a farm upon which it produces vegetables for sale to its employees.

Such a corporation can furnish steam from its boilers to another company. It cannot become a stockholder in another company without an expressed authority in its charter. *People ex rel. Moloney v. Pullman Palace Car Co.*, 175 Ill. 125; 51 N. E. Rep. 664.

**Quo warranto for usurpation of power.**

In quo warranto by the State against a corporation for alleged usurpation of power, the latter alleged as a defense that the usurpation complained of had continued for a number of years with the knowledge of the State and that the State had waived and acquiesced therein; it was held that such a defense was not available against the State, since its demands could not be defeated by imputation of laches. The company also alleged as a defense to the allegation of unlawful holding of real property, that the State, by its legislature, had appointed a committee to investigate the property of the corporation and ascertain if it was properly taxed, and that the committee reported all of said property properly taxed; it was held that such defense was not available, since such report was not a concession by the State that the corporation had power to acquire a title to such real estate. *Id.*

**Power to hold real property; exclusive franchise.**

It is against the public policy of the State to allow corporations to hold real property beyond what is necessary for the transaction of the business or the specific corporate purposes of the corporation. It is against public policy that any corporation shall receive a special or exclusive franchise by virtue of any special law. *First M. E. Church v. Dixon*, 178 Ill. 260; 52 N. E. Rep. 887.

**Transfer of stock.**

Where an owner of stock executes a written transfer thereof to another, possession by the latter of the certificates, with the blank assignments and powers of attorney to transfer them on the books of the corporation, signed by the owner, raises a presumption that the delivery was valid, entitling the transferee to the stock. *Coffey v. Coffey*, 179 Ill. 283; 53 N. E. Rep. 590.

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**By-laws.**

A corporation has no power to enact by-laws inconsistent with the statute under which it was created. *King v. International Building, Loan & Investment Union*, 170 Ill. 135; s. c., 48 N. E. Rep. 677.

**Meeting outside of State; ratification of invalid act.**

Under Revised Stats., chap. 32, § 20 (Anno. Corp. Laws, Ill., p. 29), declaring that the action of the directors of a corporation at a meeting held outside of the State shall be void, unless such meeting was authorized on its acts ratified by a vote of two-thirds of the officers at a regular meeting, a mortgage executed in pursuance of a resolution adopted at a meeting held in another State was invalid as against attaching creditors, where such meeting was not authorized nor such action ratified by a vote of two-thirds of the directors. Where the directors, at a subsequent meeting, legally held, by resolution confirmed such mortgage, or authorized the execution of a new one, such action was ineffectual to defeat the rights which had in the meantime been acquired by such attaching creditors, as it could only be taken subject to their attachment lien. There being nothing in such statutory provision prohibiting corporate meetings outside of the State, to indicate that it should have a limited or qualified meaning, creditors as well as stockholders might avail themselves thereof. *State Nat. Bank v. Union Nat. Bank*, 168 Ill. 519; s. c., 48 N. E. Rep. 82.

**Pleading corporate existence.**

Under Crim. Code, chap. 38, § 486, providing that user shall be *prima facie* evidence of the existence of a corporation, proof of the exercise of corporate powers is sufficient to support an allegation that a corporation was incorporated under the laws of the State. *Waller v. People*, 176 Ill. 221; 51 N. E. Rep. 900.

**Corporate records as evidence.**

Corporate records fully identified by a witness who was a member of the board of trustees and treasurer of the corporation at the time of the transactions sought to be shown thereby, are admissible in evidence. *Illinois Conference of Evangelical Assn. v. Flagge*, 53 N. E. Rep. 76.

**Insolvency; illegal preference of directors.**

The law is, that an insolvent corporation cannot prefer a creditor who, at the time, is a director therein. But this equitable principle should not apply to a bona fide creditor where a debt is created and guaranteed by the director during solvency. Such guaranty does not render such debt fraudulent. No law has been violated and no reason exists why such a debt should be

tainted with illegality. His relation as a creditor is created by his contract with the corporation and not with the guarantors. He is just as clearly by law a creditor with such guaranty as without it. His rights as such creditor remain, to the end, unimpaired, during solvency and through insolvency. *Rockford Wholesale Grocery Co. v. Standard Grocery & Meat Co.*, 176 Ill. 89; 51 N. E. Rep. 642.

The court in this case in considering the question of preferences by insolvent corporations said: "When the corporation becomes insolvent, then, it is said, in equity the officials become trustees for the creditors; but the rule of law is fixed that after insolvency the authority to give a preference, in the absence of statutory prohibition, is as complete and absolute as that of an individual, for as stated in *Fogg v. Blair*, 133 U. S. 534; 10 Sup. Ct. 338, 'the doctrine that the property of the corporation is a trust fund, only means that the property must first be appropriated to the payment of the debts of the company before any part of it can be distributed to the stockholders,' and before any of it can be distributed to the directors as creditors, by way of preference."

**Insolvency; preferences.**

Mere insolvency of a corporation does not deprive it of the power to dispose of corporate property in good faith, by way of paying a receiving corporate indebtedness, though the result may be to give one creditor a preference over others. *State Nat. Bank v. Union Nat. Bank*, 168 Ill. 519; s. c., 48 N. E. Rep. 82.

**Injunction by stockholders to restrain issue of bonds.**

The mere averment in a bill by a stockholder, to enjoin a corporation from issuing certain debenture bonds, that its president, in a certain report made two years before the bill was filed, stated that the issue had been determined upon, and that the bonds would not increase the indebtedness nor the fixed charges nor interest charges upon the corporation, but would give the management working capital and enable it to retire short-time maturing paper, is not sufficient to call for the interference of a court of equity. *Coquard v. National Linseed Oil Co.*, 171 Ill. 480; s. c., 49 N. E. Rep. 563.

**Right to examine books; pleadings.**

A bill by a stockholder to enjoin a corporation from interfering with him in examining its books and to have a discovery of its affairs, is insufficient when it fails to show that there has ever been any denial of his right to do so a refusal to give him information concerning its affairs. *Coquard v. National Linseed Oil Co.*, 171 Ill. 480; s. c., 49 N. E. Rep. 563.

**Illegal dividend, suit to enjoin payment; pleadings.**

Revised Statutes, chap. 32, § 19 (Anno. Corp. L., Ill., p. 29), prohibits the payment of any dividend when a corporation is insolvent, or when such payment would diminish the amount of its capital stock. It was held that a bill by a stockholder to enjoin such payment is insufficient where it does not own that the corporation is insolvent or that a dividend would impair its capital, except as a matter of argument based on its alleged illegal character, and the consequent invalidity of its credits and bills receivable, and its inability to collect them by law. Coquard v. National Linseed Oil Co., 171 Ill. 480; s. c., 49 N. E. Rep. 563.

**Dissolution, when not granted.**

Where it is shown that a bill by a stockholder to dissolve a corporation is filed in pursuance of an agreement with the president of another corporation, against which the corporation sought to be dissolved has an important suit pending, and the object sought is to dissipate rather than present the assets, the bill will be dismissed. Watson v. LeGrand Roller Skating Rink Co., 177 Ill. 203; 52 N. E. Rep. 317.

**Acts against public policy; forfeiture of franchise.**

The act of a corporation in abusing its franchise by dictating to its members, consisting of live-stock commission merchants, as to the number and kind of travelling solicitors they shall employ, and how they shall be paid, is against public policy, and hence the State may proceed to claim a forfeiture of its charter by an information in the nature of quo warranto. People ex rel. McIlhany v. Chicago Live Stock Exchange, 170 Ill. 556; s. c., 48 N. E. Rep. 1062.

**Trusts and combinations; stockholders cannot maintain action to forfeit franchise.**

The mere fact that a linseed oil company has acquired a great many oil mills and plants, and is managing a large business, is insufficient to show that it is a trust formed in violation of law, and is not doing lawful business. Coquard v. Nat. Linseed Oil Co., 171 Ill. 480; s. c. 49 N. E. Rep. 563.

The State only, and not an individual stockholder, can complain that an illegal combination or trust is an injury to the public, and enforce a forfeiture of its corporate franchise on that ground. Where a stockholder attempts to institute such a proceeding, his bill is defective if it fails to show that he did not have knowledge of, or participate in, the illegal acts, though his individual interests are affected thereby. Where such bill fails to show that he had

no knowledge of such illegal acts, such knowledge will be presumed, and his acquiescence and delay for a number of years bar his suit for relief. Id.

**Liability of stockholders; Kansas Const., Act XII., § 2; effect of decisions of courts of other States.**

The provision in the Constitution of Kansas, Art. XII., § 2 (Anno. Corp. L., Kan., p. 5), that "dues from corporations shall be secured by individual liability of stockholders to an additional amount equal to the stock owned by each stockholder, and such other means as shall be provided by law," is not self-executing without the aid of legislation. Bell v. Farwell, 176 Ill. 489; s. c., 52 N. E. Rep. 346.

Where a statute of one State, which is neither penal nor criminal, has received a construction by the highest court of such State, such construction is binding on the courts of other States. The liability of a stockholder imposed by the constitutional provision above referred to and Kan. Stats. 1889, paragraphs 1200-1205 (Anno. Corp. L., Kan., pp. 18, 19), is not penal, but contractual and, therefore, can be enforced in other States. Id.

Where it is provided by the statutes and Constitution of another State that an action at law may be maintained by a creditor of an insolvent corporation against a single stockholder, and an action may be maintained in Illinois against a stockholder of a corporation organized under such law without first proceeding in equity in the former State, although a liability of a stockholder of a corporation organized under the laws of Illinois can be enforced only in equity. Id.

**Liability of stockholders; unpaid capital stock.**

Where the stockholders of a California corporation to avoid their liability under the California statutes, organize an Illinois corporation, with the same number of shares, for all of which they subscribe, paying nothing therefor, and the California corporation then trades its assets and franchises to the Illinois corporation, which gives therefor its shares of stock, and assumes the debts of the California corporation, the stockholders of which exchange their stock each for an equal number of shares of the Illinois corporation, the stock of the latter will not be considered full paid, but paid only to the extent of the net value of the assets received; and the liability of stockholders to creditors will be for their pro rata share of the debts to the extent of the difference under the Illinois statutes. The liability of a stockholder and assignor of stock to creditors for unpaid subscriptions on stock is not affected by the creditor's knowledge or

## Decisions.

ignorance, when extending the credit, that the stock, though issued as fully paid, was in part unpaid. *Sprague v. Nat. Bank of America*, 172 Ill. 149; s. c., 50 N. E. Rep. 19.

**Liability of directors and stockholders for unauthorized acts of corporation.**

Where a national bank executed a lease before the comptroller of currency had authorized it to do business, the directors and stockholders are not liable thereon, where they are not named as parties to the lease, and there are no words to bind them to its covenants; nor are they liable on such lease as partners. But the officers of such a bank executing the lease, are personally liable on the implied warranty of their authority to act on behalf of the corporation, where they were aware of their want of authority, while the lessor was not. *Seeburger v. McCormick*, 178 Ill. 404; 53 N. E. Rep. 340.

**Liability for torts during receivership.**

Where the net income derived from the

business of a corporation during a receivership is diverted from the payment of the operating expenses, and applied to the permanent improvement of the corporate property, and the receiver is discharged and the property turned over to the corporation, it is liable for torts occurring during the receivership, to the extent of the net income so applied. *Bartlett v. Cicero Light, Heat & Power Co.*, 177 Ill. 68; 52 N. E. Rep. 339.

**Taxation. Electric light companies.**

The charter of a corporation showed that it was organized "to furnish light, heat and power for public and private purposes." This was held not to be a corporation organized for purely manufacturing purposes, and was, therefore, not assessable by local assessors but its stock and franchise should be assessed by the State board of equalization, under Rev. Stats, chap. 120, § 3 (Anno. Corp. L., Ill., p. 54). *Evanston Electric Illuminating Co. v. Rochersperger*, 175 Ill. 26; s. c., 51 N. E. Rep. 719.







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INDIANA.

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# INDIANA.

## LAWS OF 1899.

**Chapter 124. Weekly payment of wages.**

- 128. Labor commission.
- 142. Hours of labor; labor in factories; department of inspection created.
- 148. Trusts and combinations.
- 168. Receivers.

### CHAPTER 124.

#### Weekly Payment of Wages.

**AN ACT** providing for the weekly payment of wages due employees, making it unlawful for any employer to assess a fine against the wages of an employee, and regulating changes in rate of wages, prohibiting the assignment of future wages; providing for its enforcement and repealing all laws in conflict therewith.

(S. 134. Approved February 28, 1899.)

Section 1. Be it enacted by the General Assembly of the State of Indiana, That every person, company, corporation or association, employing any person, to labor, or in any other service for hire, shall make weekly payments for the full amount due for such labor or service, in lawful money of the United States to within six days or less of the time of such payment; but if, at any time of stated payment, any employee as aforesaid shall be absent from his regular place of labor or service, he shall be paid in like manner thereafter on demand; Provided, That this act shall not apply to any employee engaged by a common carrier in interstate commerce: And, provided, That the labor commissioners of the State, after notice and hearing, may exempt any of the aforesaid parties whose employees prefer a less frequent payment, from paying any of its employees weekly, if, in the opinion of the said commissioners, the interests of the public and of such employees will not suffer thereby.

§ 2. The chief inspector of the department of inspection of this State, or any person interested, may bring suit in the name of the State in any court of competent jurisdiction, and the prosecuting attorney of any county wherein such suit is brought, shall prosecute the same against any person, company,

corporation or association that neglects or refuses to comply with section 1 of this act, within ten days after such payment is due and left unpaid; and in case judgment is rendered in favor of said employe and against said defendant for the sum alleged to be due or any part thereof, six per centum of such sum shall be added to such judgment from the time when payment was due; and a penalty of fifty per centum of the amount of such judgment shall be assessed and collected from said defendant by said court and paid into the school fund of the State.

§ 3. It shall be unlawful for any employer to assess a fine on any pretext against any employe and retain the same or any part thereof from the wages of said employe at the time of payment fixed in this act, or at any other time, and a change in the current rate of wages paid is prohibited without a written notice given to each employe so affected twenty-four hours before such change shall take place.

§ 4. The assignment of future wages, to become due to employes from persons, companies, corporations or associations affected by this act, is hereby prohibited, nor shall any agreement be valid that relieves said persons, companies, corporations or associations from the obligation to pay weekly, the full amount due, or to become due, to any employe in accordance with the provisions of this act, Provided, That nothing in this act shall be construed to prevent employers advancing money to their employes.

§ 5. Any person, company, corporation or association, found guilty by a court of competent jurisdiction of having violated the third and fourth sections of this act, shall be deemed guilty of having committed a misdemeanor, and shall be fined by such court in any sum not exceeding two hundred dollars.

§ 6. It is hereby made the duty of the chief inspector and of the department of inspection to enforce the provisions of this act by the processes of the courts, and in the name of the State; and, upon their failure so to do, any citizen of the State is hereby authorized to do the same in the name of the State.

## Labor commission.

**CHAPTER 128.****Labor Commission.**

**AN ACT** providing for the creation of a labor commission, and defining its duties and powers, and providing for arbitrations and investigations of labor troubles; and repealing all laws and parts of laws in conflict with this act.

(S. 228. Approved February 28, 1899.)

Section 1. Be it enacted by the General Assembly of the State of Indiana, That there shall be, and is hereby created a commission to be composed of two electors of the State, which shall be designated the labor commission, and which shall be charged with the duties and vested with the powers hereinafter enumerated.

§ 2. The members of said commission shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for four years and until their successors shall have been appointed and qualified. One of said commissioners shall have been for not less than ten years of his life an employe for wages in some department of industry in which it is usual to employ a number of persons under single direction and control, and shall be at the time of his appointment affiliated with the labor interests, as distinguished from the capitalist or employing interest. The other of said commissioners shall have been for not less than ten years an employer of labor for wages in some department of industry in which it is usual to employ a number of persons under single direction and control, and shall be at the time of his appointment affiliated with the employing interests as distinguished from labor interest. Neither of said commissioners shall be less than forty years of age; they shall not be members of the same political party, and neither of them shall hold any other State, county, or city office in Indiana during the term for which he shall have been appointed. Each of said commissioners shall take and subscribe an oath, to the effect that he will punctually, honestly and faithfully discharge his duties as such commissioner.

§ 3. Said commission shall have a seal and shall be provided with an office at Indianapolis, and may appoint a secretary, who shall be a skillful stenographer and typewriter, and shall receive a salary of six hundred dollars per annum and traveling expenses for every day spent in the discharge of duty away from Indianapolis.

§ 4. It shall be the duty of said commissioners upon receiving creditable information in any manner of the existence of any strike, lockout, boycott, or other labor complication in this State, to go to the place where such complication exists, put them-

selves in communication with the parties to the controversy and offer their services as mediators between them. If they shall not succeed in effecting an amicable adjustment of the controversy in that way they shall endeavor to induce the parties to submit their differences to arbitration, either under the provisions of this act or otherwise, as they may elect.

§ 5. For the purpose of arbitration under this act, the labor commissioners and the judge of the circuit court of the county in which the business in relation to which the controversy shall arise, shall have been carried on, shall constitute a board of arbitrators, to which may be added, if the parties so agree, two other members, one to be named by the employer and the other by the employes in the arbitration agreement. If the parties to the controversy are a railroad company and employes of the company engaged in the running of trains, any terminal, within this State, of the road, or of any division thereof, may be taken and treated as the location of the business within the terms of this section for the purpose of giving jurisdiction to the judge of the circuit court to act as a member of the board of arbitration.

§ 6. An agreement to enter into arbitration under this act shall be in writing, and shall state the issue to be submitted and decided, and shall have the effect of an agreement by the parties to abide by and perform the award. Such agreement may be signed by the employer as an individual, firm or corporation, as the case may be, and execution of the agreement in the name of the employer by any agent or representative of such employer then and therefore\* in control or management of the business or department of business in relation to which the controversy shall have arisen, shall bind the employer. On the part of the employes, the agreement may be signed by them in their own person, not less than two-thirds of those concerned in the controversy signing, or it may be signed by a committee by them appointed. Such committee may be created by election at a meeting of the employes concerned in the controversy at which not less than two-thirds of all such employes shall be present, which election and the fact of the presence of the required number of employes at the meeting shall be evidenced by the affidavit of the chairman and secretary of such meeting attached to the arbitration agreement, but any employe concerned in any such controversy shall be accorded a hearing before such board. If the employes concerned in the controversy, or any of them, shall be members of any labor union or workingmen's society, they may be represented in the execution of said arbitration agreement by officers or com-

\* So in session laws.

## Labor commission.

teemen of the union or society designated by it in any manner, conformable to its usual methods of transacting business, and others of the employees represented by committee as hereinbefore provided.

§ 7. If upon any occasion calling for the presence and intervention of the labor commissioners under the provisions of this act, one of said commissioners shall be present and the other absent, the judge of the circuit court of the county in which the dispute shall have arisen, as defined in section 5, shall upon the application of the commissioners present, appoint a commissioner pro tem., in the place of the absent commissioner and such commissioner pro tem., shall exercise all the powers of a commissioner under this act until the termination of the duties of the commission with respect to the particular controversy upon the occasion of which the appointment shall have been made, and shall receive the same pay and allowances provided by this act for the other commissioners. Such commissioner pro tem. shall represent and be affiliated with the same interests as the absent commissioner.

§ 8. Before entering upon their duties the arbitrators shall take and subscribe an oath or affirmation to the effect that they will honestly and impartially perform their duties as arbitrators and a just and fair award rendered to the best of their ability. The sittings of the arbitrators shall be in the courtroom of the circuit court, or such other place as shall be provided by the county commissioners of the county in which the hearing is had. The circuit Judge shall be the presiding member of the board. He shall have power to issue subpoenas for witnesses who do not appear voluntarily, directed to the sheriff of the county, whose duty it shall be to serve the same without delay. He shall have power to administer oaths and affirmations to witnesses, enforce order, and direct and control the examinations. The proceedings shall be informal in character, but in general accordance with the practice governing the circuit courts in the trial of civil causes. All questions of practice, or questions relating to the admission of evidence shall be decided by the presiding member of the board summarily and without extended argument. The sittings shall be open and public or with closed doors, as the board shall direct. If five members are sitting as such board three members of the board agreeing shall have power to make an award, otherwise two. The secretary of the commission shall attend the sittings and make a record of the proceedings in shorthand, but shall transcribe so much thereof only as the commission shall direct.

§ 9. The arbitrators shall make their award in writing and deliver the same with

the arbitration agreement and their oath as arbitrators to the clerk of the circuit court of the county in which the hearing was had, and deliver a copy of the award to the employer and a copy to the first signer of the arbitration agreement on the part of the employees. A copy of all the papers shall also be preserved in the office of the commission at Indianapolis.

§ 10. The clerk of the circuit court shall record the paper delivered to him as directed in the last preceding section, in the order-book of the circuit court. Any person who was a party to the arbitration proceedings may present to the circuit court of the county in which the hearing was had, or the judge thereof in vacation, a verified petition referring to the proceedings and the record of them in the order-book showing that said award has not been complied with, stating by whom and in what respect it has been disobeyed. And thereupon the court or judge thereof in vacation, shall grant a rule against the party or parties so charged, to show cause within five days why said award has not been obeyed, which shall be served by the sheriff as other process. Upon return made to the rule the judge or court, if in session, shall hear and determine the questions presented and make such order or orders directed to the parties before him in personam, as shall give just effect to the award. Disobedience by any party to such proceedings of any order so made shall be deemed a contempt of the court and may be punished accordingly. But such punishment shall not extend to imprisonment except in case of willful and contumacious disobedience. In all proceedings under this section the award shall be regarded as presumptively binding upon the employer and all employees who were parties to the controversy submitted to arbitration, which presumption shall be overcome only by proof of dissent from the submission delivered to the arbitrators, or one of them, in writing before the commencement of the hearing.

§ 11. The labor commission with the advice and assistance of the attorney-general of the State, which he is hereby required to render, shall make rules and regulations respecting proceedings in arbitrations under this act not inconsistent with this act or the law, including forms, and cause the same to be printed and furnished to all persons applying therefor, and all arbitration proceedings under this act shall thereafter conform to such rules and regulations.

§ 12. Any employer and his employees, between whom differences exist which have not resulted in any open rupture or strike, may of their own motion apply to the labor commission for arbitration of their differences, and upon the execution of an arbitration agreement as hereinbefore provided, a board of arbitrators shall be organized in the manner hereinbefore provided, and the

## Labor commission.

arbitration shall take place and the award be rendered, recorded and enforced in the same manner as in arbitrations under the provisions found in the preceding sections of this act.

§ 13. In all cases arising under this act requiring the attendance of a judge of the circuit court as a member of an arbitration board, such duty shall have precedence over any other business pending in his court, and if necessary for the prompt transaction of such other business it shall be his duty to appoint some other circuit judge, or judge of a superior or the appellate or supreme court to sit in the circuit court in his place during the pendency of such arbitration and such appointee shall receive the same compensation for his services as is now allowed by law to judges appointed to sit in case of change of judge in civil actions. In case the judge of the circuit court, whose duty it shall become under this act to sit upon any board of arbitration, shall be at the time actually engaged in a trial which cannot be interrupted without loss and injury to the parties, and which will in his opinion continue for more than three days to come, or is disabled from acting by sickness or otherwise, it shall be the duty of such judge to call in and appoint some other circuit judge, or some other judge of a superior court, or the appellate or supreme court, to sit upon such board of arbitrators, and such appointed judge shall have the same power and perform the same duties as member of the board of arbitration as are by this act vested in and charged upon the circuit judge regularly sitting, and he shall receive the same compensation now provided by law to a judge sitting by appointment upon change of judge in civil cases, to be paid in the same way.

§ 14. If the parties to any such labor controversy as is defined in section 4 of this act shall have failed at the end of five days after the first communication of said labor commission with them to adjust their differences amicably, or to agree to submit the same to arbitration, it shall be the duty of the labor commission to proceed at once to investigate the facts attending the disagreement. In this investigation the commission shall be entitled, upon request, to the presence and assistance of the attorney-general of the State, in person or by deputy, whose duty it is hereby made to attend without delay, upon request by letter or telegram from the commission. For the purpose of such investigation the commission shall have power to issue subpoenas, and each of the commissioners shall have power to administer oaths and affirmations. Such subpoena shall be under the seal of the commission, and signed by the secretary of the commission or a member of it, and shall command the attendance of the person or persons named in it at a time and place named, which sub-

poena may be served and returned as other process by any sheriff or constable in the State. In case of disobedience of any such subpoena, or the refusal of any witness to testify, the circuit court of the county within which the subpoena was issued, or the judge thereof in vacation, shall, upon the application of the labor commission, grant a rule against the disobeying person or persons, or the person refusing to testify, to show cause forthwith why he or they should not obey such subpoena, or testify as required by the commission, or be adjudged guilty of contempt, and in such proceedings such court, or the judge thereof in vacation, shall be empowered to compel obedience to such subpoena as in the case of subpoena issued under the order and authority of the court, or to compel a witness to testify as witnesses in court are compelled to testify. But no person shall be required to attend as a witness at any place outside the county of his residence. Witnesses called by the labor commission under this section shall be paid \$1 per diem fees out of the expense fund provided by this act, if such payment is claimed at the time of their examination.

§ 15. Upon the completion of the investigation authorized by the last preceding section, the labor commission shall forthwith report the facts thereby disclosed affecting the merits of the controversy in succinct and condensed form to the governor, who, unless he shall perceive good reason to the contrary, shall at once authorize such report to be given out for publication. And as soon thereafter as practicable, such report shall be printed under the direction of the commission and a copy shall be supplied to any one requesting the same.

§ 16. Any employer shall be entitled, in his response to the inquiries made of him by the commission in the investigation provided for in the two last preceding sections, to submit in writing to the commission, a statement of any facts material to the inquiry, the publication of which would be likely to be injurious to his business, and the facts so stated shall be taken and held as confidential, and shall not be disclosed in the report or otherwise.

§ 17. Said commissioners shall receive a compensation of eighteen hundred dollars each per annum, and actual and necessary traveling expenses while absent from home in the performance of duty, and each of the two members of a board of arbitration chosen by the parties under the provisions of this act shall receive five dollars per day compensation for the days occupied in service upon the board. The attorney-general, or his deputy, shall receive his necessary and actual traveling expenses while absent from home in the service of the commission. Such compensation and expenses shall be paid by the treasurer of State upon warrants drawn by the auditor upon itemized

## Hours of labor; labor in factories.

and verified accounts of time spent and expenses paid. All such accounts, except those of the commissioners, shall be certified as correct by the commissioners, or one of them, and the accounts of the commissioners shall be certified by the secretary of the commission.

§ 18. For the payment of the salary of the secretary of the commission, the compensation of the commissioners and other arbitrators, the traveling and hotel expenses herein authorized to be paid, and for witness fee, stationery, postage, telegrams and office expenses there is hereby appropriated out of any money in the treasury, not otherwise appropriated, the sum of five thousand dollars for the year 1899 and five thousand dollars for the year 1900.

§ 19. All laws and parts of laws conflicting with any of the provisions of this act are hereby repealed.

## CHAPTER 142.

## Hours of Labor; Labor in Factories; Department of Inspection Created.

AN ACT concerning labor, and providing means for protecting the liberty, safety and health of laborers, providing for its enforcement by creating a department of inspection, and making an appropriation therefor, repealing all laws in conflict therewith.

(H. 214. Approved March 2, 1899.)

Section 1. Be it enacted by the General Assembly of the State of Indiana, That no person under sixteen years of age, and no female under eighteen years of age, employed in any manufacturing or mercantile establishment, laundry, renovating works, bakery, or printing office, shall be required, permitted or suffered to work therein more than sixty hours in any one week, nor more than ten hours in any one day, unless for the purpose of making a shorter day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the whole number of days which such person or such female shall so work during such week; and every person, firm, corporation or company employing any person under sixteen years of age, or any female under eighteen years of age in any establishment as aforesaid, shall post and keep posted in a conspicuous place in every room where such help is employed a printed notice stating the number of hours of labor per day required of such person for each day of the week, and the number of hours of labor exacted or permitted to be performed by such persons shall not exceed the number of hours of labor so posted as being required. The time of beginning and ending the day's labor shall be the time stated in such notice: Provided, That such females under eighteen and persons under sixteen

years of age may begin after the time set for beginning and stop before the time set in such notice for the stopping of the day's labor, but they shall not be permitted or required to perform any labor before the time stated on the notices as the time for beginning the day's labor, nor after the time stated upon the notices as the hour of ending the day's labor.

§ 2. No child under fourteen years of age shall be employed in any manufacturing or mercantile establishment, mine, quarry, laundry, renovating works, bakery or printing office within this State. It shall be the duty of every person employing young persons under the age of sixteen years to keep a register, in which shall be recorded the name, birthplace, age and place of residence of every person employed by him under the age of sixteen years; and it shall be unlawful for any proprietor, agent, foreman or other person connected with a manufacturing or mercantile establishment, mine, quarry, laundry, renovating works, bakery or printing office to hire or employ any young person to work therein without there is first provided and placed on file in the office an affidavit made by the parent or guardian, stating the age, date and place of birth of said young person; if such young person have no parent or guardian, then such affidavit shall be made by the young person, which affidavit shall be kept on file by the employer, and said register and affidavit shall be produced for inspection on demand made by the inspector, appointed under this act. There shall be posted conspicuously in every room where young persons are employed, a list of their names, with their ages respectively. No young person under the age of sixteen years, who is not blind, shall be employed in any establishment aforesaid, who cannot read and write simple sentences in the English language, except during the vacation of the public schools in the city or town where such minor lives. The chief inspector of the department of inspection shall have the power to demand a certificate of physical fitness from some regular physician in the case of young persons who may seem physically unable to perform the labor at which they may be employed, and shall have the power to prohibit the employment of any minor that cannot obtain such certificate.

§ 3. No person or corporation, or officer or agent thereof, shall employ any woman or female young person in any capacity for the purpose of manufacturing, between the hours of ten o'clock at night and six o'clock in the morning.

§ 4. No person, company, corporation or association shall employ or permit any young person to have the care, custody, management of or to operate any elevator.

§ 5. It shall be the duty of the owner or lessees of any manufacturing or mercantile

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establishment, laundry, renovating works, bakery or printing office, where there is an elevator, hoisting shaft, or well-hole, to cause the same to be properly and substantially inclosed or secured, if in the opinion of the chief inspector it is necessary, to protect the lives or limbs of those employed in such establishment. It shall also be the duty of the owner, agent or lessee of each of such establishments to provide, or cause to be provided, if in the opinion of the chief inspector, the safety of persons in or about the premises should require it, such proper trap or automatic doors so fastened in or at all elevator-ways as to form a substantial surface when closed, and so constructed as to open and close by the action of the elevator in its passage, either ascending or descending, but the requirements of this section shall not apply to passenger elevators that are closed on all sides. The chief inspector shall inspect the cables, gearing or other apparatus of elevators in the establishments above enumerated and require that the same be kept in safe condition with proper safety devices whereby the cabs or cars will be securely held in event of accident to the cable or rope or hoisting machinery, or from any similar cause.

§ 6. Proper and substantial handrails shall be provided on all stairways in all establishments above enumerated, and where, in the opinion of the chief inspector it is necessary, the steps of said stairs in all such establishments shall be substantially covered with rubber, securely fastened thereon, for the better safety of persons employed in said establishments. The stairs shall be properly screened at the sides and bottoms. All doors leading in or to such establishments aforesaid shall be so constructed as to open outwardly where practicable, and shall be neither locked, bolted nor fastened during working hours.

§ 7. In every manufacturing or other establishment, where the machinery used is propelled by steam, communication shall be provided between each room where such machinery is placed and the room where the engineer is stationed, by means of speaking tubes, electric bells or appliances that may control the motive power, or such other means as shall be satisfactory to the chief inspector; Provided, That in the opinion of the inspector such communication is necessary.

§ 8. It shall be the duty of the owner, agent, superintendent or other person having charge of any manufacturing or mercantile establishment, mine, quarry, laundry, renovating works, bakery, or printing office within this State, or of any floor or part thereof, to report in writing to the chief inspector all accidents or injury done to any person in such premises within forty-eight hours of the time of the accident, stating as fully as possible the extent and cause of

such injury, and the place where the injured person is sent, with such other information relative thereto as may be required by the chief inspector. The chief inspector is hereby authorized and empowered to fully investigate the causes of such accident, and to require such reasonable precautions to be taken as will, in his judgment, prevent the recurrence of similar accidents.

§ 9. It shall be the duty of the owner of any aforesaid establishment, or his agent, superintendent or other person in charge of the same, to furnish and supply, or cause to be furnished and supplied therein, in the discretion of the chief inspector, where machinery is used, belt shifters or other safe mechanical contrivances for the purpose of throwing on or off belts or pulleys; and whenever possible, machinery therein shall be provided with loose pulleys; all vats, pans, saws, planers, cogs, gearing, belting, shafting, set screws and machinery of every description therein shall be properly guarded, and no person shall remove or make ineffective any safeguard around or attached to any planer, saw, belting, shafting or other machinery, or around any vat or pan, while the same is in use, unless for the purpose of immediately making repairs thereto, and all such safeguards shall be promptly replaced. By attaching thereto a notice to that effect, the use of any machinery may be prohibited by the chief inspector should such machinery be regarded as dangerous. Such notice must be signed by the chief inspector, and shall only be removed after the required safeguards are provided, and the unsafe or dangerous machine shall not be used in the meantime. Exhaust fans of sufficient power shall be provided for the purpose of carrying off dust from emery wheels and grindstones and dust-creating machinery from establishments where used. No person under sixteen years of age, and no female under eighteen years of age, shall be allowed to clean machinery while in motion.

§ 10. A suitable and proper washroom and water closet shall be provided by the owner, agent or lessee in each establishment above enumerated, and such water closets shall be properly screened and ventilated and be kept at all times in a clean condition, with not less than one seat for each twenty-five persons, and one seat for each fraction thereof above ten, employed in such establishment; and if women and girls are employed in any such establishment, the water closets used by them shall have separate approaches and be separate and apart from those used by the men. All water closets shall be kept free of obscene writing and marking. A dressing-room shall be provided for women and girls, when required by the chief inspector, in any establishment aforesaid in which women and girls are employed; and the employer of such women and girls

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shall provide a suitable seat for the use of each female employe placed conveniently where she works, and shall permit the use of the same when she is not necessarily engaged in the active duties for which she is employed, and such seats shall be constructed or adjusted where practicable so as to be a fixture and not obstruct such female when actually engaged in the performance of such duties when such seat cannot be used.

§ 11. Not less than sixty minutes shall be allowed for the noon-day meal in any aforesaid establishment in this State. The chief inspector shall have the power to issue written permits in special cases, allowing shorter meal-time at noon, and such permit must be conspicuously posted in the main entrance of the establishment, and such permit may be revoked at any time the chief inspector deems necessary, and shall only be given where good cause can be shown.

§ 12. The walls and ceilings of each room in every establishment aforesaid, shall be lime-washed or painted, when in the opinion of the chief inspector it shall be conducive to the health or cleanliness of the persons working therein.

§ 13. The chief inspector, or other competent person designated for such purpose by the chief inspector, shall inspect any building used as aforesaid, or anything attached thereto, located therein, or connected therewith which has been represented to be unsafe or dangerous to life or limb. If it appears upon such inspection that the building or anything attached thereto, located therein, or connected therewith, is unsafe or dangerous to life or limb, the chief inspector shall order the same to be removed or rendered safe and secure, and if such notification be not complied with within a reasonable time, he shall prosecute whoever may be responsible for such delinquency.

§ 14. No room or rooms, apartment or apartments in any tenement or dwelling-house shall be used for the manufacture of coats, vests, trousers, knee-pants, overalls, cloaks, furs, fur trimmings, fur garments, shirts, purses, feathers, artificial flowers or cigars, for sale, excepting by the immediate members of the family living therein. No person, firm or corporation shall hire or employ any person to work in any one room or rooms, apartment or apartments, in any tenement or dwelling-house, or building in the rear of a tenement or dwelling-house at making, in whole, or in part, any vests, coats, trousers, knee-pants, fur, fur trimmings, shirts, purses, feathers, artificial flowers or cigars, for sale, without obtaining first a written permit from the chief inspector, which permit may be revoked at any time the health of the community, or of those employed therein, may require it, and which permit shall not be granted until an

inspection of such premises is made by the chief inspector, or a deputy inspector, and the maximum number of persons allowed to be employed therein shall be stated in such permit. Such permit shall be framed and posted in a conspicuous place in the room, or in any one of the rooms to which it relates.

§ 15. No less than two hundred and fifty cubic feet of air space shall be allowed for each person in any workroom, where persons are employed during the hours between six o'clock in the morning and six o'clock in the evening, and not less than four hundred cubic feet of air space shall be provided for each person in any workroom where persons are employed between six o'clock in the evening and six o'clock in the morning. By a written permit the chief inspector may allow persons to be employed in a room where there are less than four hundred cubic feet, but not less than two hundred and fifty cubic feet of air space for each person employed between six o'clock in the evening and six o'clock in the morning: Provided, Such room is lighted by electricity at all times during such hours while persons are employed therein. There shall be sufficient means of ventilation provided in each workroom of every manufacturing or mercantile establishment, laundry, renovating works, bakery or printing office within this State, and the chief inspector shall notify the owner in writing to provide, or cause to be provided, ample and proper means of ventilation for such workroom, and shall prosecute such owner, agent or lessee if such notification be not complied with within twenty days of the service of such notice.

§ 16. Proprietors, agents or managers of any manufacturing or mercantile establishment, mine or quarry, laundry, renovating works, bakery or printing office, are prohibited from discriminating against any person or persons, or class of labor seeking work, by posting notices or otherwise.

§ 17. It shall be unlawful for notaries public and other officers to receive more than ten cents for the preparing and certifying to a "Certificate of Parent or Guardian," provided for in this act.

§ 18. The language used in this act shall be interpreted to have the following meaning: The word "person" means any individual, corporation, partnership, company or association. The word "child" means a person under the age of fourteen years. The words "young person" means a person of the age of fourteen years and under the age of eighteen years. The word "woman" means a female of the age of eighteen years and upwards. The words "manufacturing or mercantile establishment, mine, quarry, laundry, renovating works, bakery, or printing office" means any mill, factory, work-

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shop, store, place of trade or other establishment where goods, wares or merchandise are manufactured or offered for sale, or any mine or quarry where coal and stone are mined and quarried for the market, and persons are employed for hire.

§ 19. For the purpose of carrying out the provisions of this act, a department of inspection is hereby created, and the governor shall, by and with the advice and consent of the senate, appoint a chief inspector to have charge of said department. Said inspector shall hold and continue in office after the expiration of his term of office until his successor shall have been appointed and qualified. The term of office of the chief inspector shall be for four years. The annual salary of such chief inspector shall be one thousand eight hundred dollars (\$1,800) and actual expenses when absent from home in the discharge of his official duties. Said chief inspector shall, by and with the consent of the governor, appoint two deputy inspectors, whose salary shall be one thousand dollars (\$1,000) each per annum, and actual expenses when absent from home in discharge of their official duties. But said actual expenses for the department of inspection shall in no year exceed the sum of one thousand five hundred dollars (\$1,500), and the duties of the deputy inspectors shall be such as shall be assigned them by the chief inspector. Said chief inspector shall also employ a stenographer at a salary not to exceed six hundred dollars (\$600) per annum. The salary and actual expenses of said deputy inspectors and stenographer shall be paid monthly as due, on vouchers duly attested before some officer authorized to administer oaths, and approved and signed by the chief inspector, and the salary and actual expenses of the chief inspector shall be paid in monthly installments, out of the treasury of the State, upon warrant of the auditor of State, and the total annual appropriation of five thousand nine hundred dollars (\$5,900) for such payments aforesaid, is hereby made out of any moneys in the State treasury not otherwise appropriated. Provided, That the auditor of State shall issue no warrant, except upon itemized bills, sworn to, and presented by the chief inspector provided for in this act.

§ 20. The custodian of the State Capitol shall assign a suitable and sufficient room or rooms therein for use as the office of said department of inspection, and provide the same with all necessary furniture and janitor service.

§ 21. The chief inspector shall keep a record of all inspections and examinations made by his department, and copies of all notices and orders made by him, and, at the close of his term of office, transfer the books containing the same to his successor. He shall make an annual report of his doings

as such inspector to the governor at the close of each fiscal year, and cause the same to be printed, at the expense of the State, not later than the first day of January next ensuing, in such numbers as the governor may approve. Such inspector and deputy inspectors shall have power as notaries public to administer oaths and take affidavits in matters connected with the enforcement of the provisions of this act.

§ 22. It shall be the duty of the chief inspector to cause this act to be enforced, and to cause all violators of the same, to be prosecuted, and for that purpose he is empowered to visit and inspect at all reasonable hours, and as often as shall be practicable and necessary, all manufacturing or other establishments to which this bill relates. It shall be the duty of the chief inspector to examine into all violations of laws made for the benefit or protection of labor and to prosecute all violations thereof. It shall be unlawful for any person to interfere with, obstruct or hinder said chief inspector or deputy inspectors while in the performance of his or their duties, or to refuse to properly answer questions asked by him or them with reference to any of the provisions hereof.

§ 23. It shall be the duty of the chief inspector to supply all blanks necessary to make reports to his office, as required in this act, and be furnished copies of this act, which shall be conspicuously posted or hung, and kept posted or hung, in each workroom of every manufacturing or other establishment to which it relates, in the State, by the proprietor or occupant thereof.

§ 24. The prosecuting attorney of any county of this State is hereby required upon request of the chief inspector, or of any other person of full age, to commence and prosecute to a termination before any court of competent jurisdiction, in the name of the State, actions or proceedings against any person or persons reported to him to have violated the provisions of this act.

§ 25. Any person who violates or omits to comply with any of the provisions of this act, or who refuses to comply with the orders of the chief inspector, properly made under the provisions of this act, or who suffers or permits any young person or child to be employed in violation of its provisions, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars for the first offense, and not more than one hundred dollars for the second offense, to which may be added imprisonment for not more than ten days, and for the third offense a fine of not less than two hundred and fifty dollars and not more than thirty days' imprisonment in the county jail.

§ 26. Any person, company, corporation or association aggrieved by any order of the

## Trusts and combinations.

chief inspector may appeal to the circuit court in the county where the person, firm or corporation owns, leases or occupies the factory or buildings in relation to which said order relates, within ten days after notice of such order shall have been given. Said appeal shall operate as a supersedeas, shall be made in writing, and contain a brief statement of the facts and reasons for such appeal and a citation for the chief inspector to appear before said court, and said court or any judge thereof may direct the time of appearance and manner of service. Said court may review the doings of the chief inspector, may examine the questions in issue, and may confirm, change or set aside the doings of the chief inspector, in this particular case, and may make such orders in the premises, including orders as to costs, as it may find to be proper and equitable.

§ 27. In case of an appeal from any order of the chief inspector the prosecuting attorney of the circuit court shall appear as counsel for the State to sustain and defend such orders, and in case such order be sustained on such appeal, a fee of twenty-five dollars shall be taxed against the appellant as the prosecuting attorney's fee, which fee shall be taxed as costs in the case.

§ 28. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

## CHAPTER 148.

## Trusts and Combinations.

AN ACT to prohibit contracts or combinations of persons, firms or associations intended to prevent free competition in business, to provide for civil damages, penalties and punishments for violation, repealing all laws in conflict herewith.

(H. 511. Approved March 3, 1899.)

Section 1. Be it enacted by the General Assembly of the State of Indiana, That any person, firm or association of persons who shall make any contract or enter into any agreement or make any combination or enter into any arrangement, directly or indirectly, to induce, procure or prevent any wholesale or retail dealer in or manufacturer of merchandise or of supplies or of material or article intended for trade or used by any mechanic, artisan or dealer in the prosecution of his business from selling such supplies to any dealer or to any mechanic or artisan; and that any dealer in or manufacturer of such supplies or material or article of trade or supplies or material to be used by any mechanic, artisan or dealer who shall be a party, directly or indirectly, to any such contract, combination or arrangement, or who shall upon the request of any party to any such contract, combination or arrangement refuse to sell such articles of trade, supplies or materials, or articles sold

by any dealer or used by any mechanic, or artisan, to any such person or persons who may require them in the prosecution of their said business, for the reason that said dealer, mechanic or artisan is not a member of a combination or association of persons shall be guilty of conspiracy against trade. And all such contracts, agreements, combinations or arrangements shall be void and of no effect whatever in law.

§ 2. Any person or persons, firm or association of individuals or any individual connected therewith, who shall be responsible for the making of any such contract, agreement or combination or arrangement, or shall be a party to any such contract, combination or arrangement; or that shall take any part therein, as set out in section 1 of this act, shall, upon conviction thereof in any court of competent jurisdiction, be punished by a fine of not less than fifty dollars nor more than two thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding one year.

§ 3. Each and every person, firm or association of persons who shall in any manner violate the provisions of this act shall, for each and every day that such violation shall be committed and continued after due notice given by the party interested, (to the) attorney-general or prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State on the relation of the party injured or on the relation of the prosecuting attorney in any county where the offense is committed or where the offender or offenders reside. And it shall be the duty of the prosecuting attorney of any county to prosecute any such action, and he shall be entitled to a fee of twenty-five dollars, to be taxed against the defendant, in the event of recovery, as a part of the costs of said action. Any such action may be taken in any circuit or superior court of the county in which the defendant resides or in which he is engaged in business.

§ 4. Any person who shall by any such contract or combination as set out in section 1 of this act, be injured or damaged in his business thereby, or by reason of anything forbidden or declared by this act to be unlawful, may maintain a suit therefor in any court having jurisdiction thereof in the county where the defendant resides or in which he is engaged in business, or in any county where service may be obtained without respect to the amount in controversy, and the plaintiff in any such action shall be entitled to recover all his costs and a reasonable attorney's fee therein.

§ 5. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, said court may cause them to be made parties defendant and cause

## Decisions.

them to be served by the process of court as now required by law in such cases provided, whether they reside in the county where said action is pending or not.

§ 6. All laws and parts of laws in conflict with any of the provisions of this act are hereby repealed.

## CHAPTER 168.

## Receivers.

AN ACT in reference to the appointment of receivers, regulating the formal parts of the pleadings in reference thereto in suits instituted by them and the proof thereof.

(H. 188. Approved March 3, 1899.)

Section 1. Be it enacted by the General

Assembly of the State or Indiana, That hereafter in any suit or action by any receiver now appointed or hereafter appointed by any court of record in this State, it shall only be necessary for such receiver in his complaint or pleading to state the court and the cause of action in which and the date on which he was so appointed and no proof of such appointment shall be required on the trial of the cause unless such appointment shall be specially denied, in addition to the general denial filed in the cause.

## DECISIONS.

(Include 54 N. E. Rep. to p. 192.)

## Unauthorized corporations.

Burn's Rev. Stats., § 4583 (Anno. Corp. L., Ind., p. 17), authorizing the formation of corporations for the purpose of buying and selling merchandise and conducting mercantile operations, does not authorize the creation of a corporation for the purpose of buying and selling bonds. Where there is no statute authorizing the creation of a corporation to conduct a particular class of business, persons acting as a corporation in that business under an attempted incorporation do not constitute a *de facto* corporation, so as to preclude one sued by it to deny its corporate existence, as there cannot be a *de facto* corporation unless a *de jure* corporation is possible. Indiana Bond Co. v. Ogle, 54 N. E. Rep. 407.

## Fees for filing articles of consolidated corporations.

The Act of 1891, p. 84 (Rev. Stats. 1894, § 7631; Anno. Corp. L., Ind., p. 28), provides that the secretary of State shall credit certain fees for "filing the articles of agreement, or a certified copy or duplicate thereof, of any consolidation of corporations having a capital stock." It is there provided that "said articles of agreement of consolidation shall be treated as the articles of incorporation of the new consolidated corporations created by such articles of agreement of consolidation," and that the fees for filing such agreements should be the same in each case as for filing articles of incorporation "of a corporation having the same amount of capi-

tal stock as is provided for by the articles of agreement of consolidation for the new consolidated corporation, created by any such articles of agreement of consolidation." It was held that a corporation formed by the uniting of two or more corporations is to be considered a consolidation, as regards the filing of articles of agreement, though it takes the name of one of the constituent corporations. The fee imposed on corporations for filing articles, which they must file before they can be deemed legally incorporated or consolidated, is not a tax on interstate commerce, though they be engaged in such business, but on the right to exist as a corporation. Chicago & E. I. Ry. Co. v. State, 51 N. E. Rep. 924.

## Acts of officers, validity presumed.

It will be presumed, where a deed of a corporation is executed by its vice-president, that he had authority to act in its behalf. The record of a deed of a corporation sufficiently shows that the seal indicated by the word ["Seal"] was the corporate seal, the testation clause of the deed stating that the company had caused its corporate seal to be affixed, the certificate of acknowledgment setting forth that the seal was affixed by the authority of the board of directors, the secretary — the proper custodian of the corporate seal — having signed and attested the deed, and the deed having been executed and recorded for forty years before introduction of the record in evidence, without its validity being denied by the corporation. Ellison v. Branstrator, 54 N. E. Rep. 433.

## Decisions.

**Claims of officers for services.**

When the claim of an officer of a corporation is for services rendered by him beyond the scope of his official duty, and no element of fraud or dishonesty is involved, it may be allowed and paid. While the courts will closely scrutinize such claims, they will not deprive an honest and meritorious creditor of moneys justly due to him, merely because he sustained an official relation to the corporation debtor when the services were performed or the debt was contracted. *Kerrner v. Whitelock*, 53 N. E. Rep. 232.

**Monopolies; quo warranto proceedings to declare forfeiture of franchise.**

An agreement by a quasi-public gas company, incorporated to supply the city with gas for light and fuel, with the only other gas company in the city, incorporated for like purposes, fixing the price of gas to be charged consumers, and stipulating that neither company will furnish gas to persons who are patrons of the other company, when carried out, warrants a forfeiture of the franchise, because contrary to the statute prohibiting restriction of competition. In quo warranto proceedings instituted because of such agreement, the court may either declare a forfeiture of its corporate franchises, or merely a forfeiture or ouster of the right to continue the illegal acts as charged and established. *State v. Portland Natural Gas Co.*, 53 N. E. Rep. 1089.

**Quo warranto against corporations for dissolution; pleadings.**

Section 1145, Rev. Stats. 1894, provides for an information in the nature of a quo warranto, to dissolve a corporation which does or omits to do acts which amount to the surrender or forfeiture of their rights and privileges as a corporation, or when it exercises powers not conferred by law. If an information under such section fails to allege that a defendant corporation is a corporation in-

corporated under the general laws of the State, it is fatally defective, since that fact cannot be presumed. *Snyder v. Citizens' Gas & Oil Co.*, 51 N. E. Rep. 1067.

**Receivers; appointment; actions by.**

Under Burns' Rev. Stats. 1894, § 3435 (Anno. Corp. L., Ind., p. 13) providing that when a receiver of a corporation is appointed to wind up its affairs, upon the expiration of its charter, he may sue in the name of the corporation, or otherwise,—that is, in his own name,—as he may elect. *Hatfield v. Cummings*, 53 N. E. Rep. 231.

**Service of summons on foreign corporation.**

Under Burns' Rev. Stats. 1894, § 315 (Horner's, 1897, § 313; Anno. Corp. L., Ind., p. 7), actions may be brought against a foreign corporation in any court having jurisdiction of the amount demanded in any county of the State where any property, moneys, credit or effects belonging to the corporation may be found; and section 318, Burns' Rev. Stats. (Horner's, 1897, § 316; Anno. Corp. L., Ind., p. 7), provides that process may be served on a corporation by service on certain of its officers, and if none of said officers can be found, then on any person authorized to transact business in its name, and if such foreign corporation have no such person in the State on whom service can be made, it may be served in the same way as a non-resident. It was held that a foreign corporation having no agent or officer in the State on whom service might be made, a summons was properly served on a mechanical superintendent within the State on business of the foreign corporation. When a foreign corporation allows an officer or agent to transact business for it in another State, it thereby submits itself to the jurisdiction of the courts of that State, and service may be made on such officer or agent. *Rush v. Foos Mfg. Co.*, 51 N. E. Rep. 143.







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## CONSTITUTION OF IOWA - 1857.

### PROVISIONS RELATING TO CORPORATIONS.

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Sec. 1. Corporations shall be created by general laws only.  
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#### ARTICLE I.

##### Bill of Rights.

§ 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made, to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

Foreign corporation not to acquire or hold land.  
§ 2889.

[Power of eminent domain is a necessary attribute of sovereignty, rather than any reserved right of the granting of property to the citizen. Noll v. R. R. Co., 32 Iowa, 66. Above section prohibits, by implication, the taking of private property for anything but a public use. Bankhead v. Brown, 25 Iowa, 540. If a public use be declared by the legislature, courts will hold such use public, unless it manifestly appears from provisions of the act that it can have no tendency to advance or promote such public use. Id. What constitutes a taking. White v. R. R. Co., 64 Iowa, 281; s. c., 20 N. W. Rep. 436. A party cannot be deprived of his property without provision for a judicial proceeding either originally or by

appeal. Ragatz v. Dubuque, 4 Iowa, 343. Benefits to accrue are not to be estimated. Deaton v. Polk Co., 9 Iowa, 594; Bland v. Hixiebaugh, 39 id. 532; Koestenbader v. Peirce, 41 id. 204; Britton v. R. R. Co., 59 id. 540; s. c., 13 N. W. Rep. 710. Legitimate taxation not within above prohibition. Morford v. Unger, 8 Iowa, 82. "Just compensation" means a fair equivalent in money, and should be precisely commensurate with the injury sustained. Sater v. Road Co., 1 Iowa, 386; Henry v. R. R. Co., 2 id. 288. The compensation must be ascertained in the mode prescribed by law. McCrory v. Griswold, 7 Iowa, 248. Payment of damages is a condition precedent to right to enter upon and take the land. Henry v. R. R. Co., *supra*; Daniels v. R. R. Co., 35 Iowa, 129. A city cannot exercise right of eminent domain except the power be expressly given. Field v. Des Moines, 39 Iowa, 575.]

§ 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

See Const., art. VIII, § 12; Statutes, § 1619.

[While legislature may not deprive a corporation of rights vested under its charter it may pass laws in nature of police regulations, although they may operate to surrender the use of a franchise more burdensome or less remunerative. Rodemacher v. R. R. Co., 41 Iowa, 297.

The articles of incorporation, together with the general incorporation laws, create the same relation between the State and the corporation which would exist if such general laws and articles were embodied in a special legislative charter. State v. Ry. Co., 71 Iowa, 410; s. c., 32 N. W. Rep. 409.]

#### ARTICLE VII.

##### State Debts.

Section 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

#### ARTICLE VIII.

##### Corporations.

Section 1. No corporations shall be created by special laws; but the general assembly

## Corporations — Const., Art. viii, §§ 2, 3, 12.

shall provide by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

See Statutes, §§ 1607 et seq.

§ 2. The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals.

See Statutes, §§ 1607 et seq.

[Independent of this provision, the general assembly is vested, by virtue of its general legislative authority, with power to subject all classes of property, including that of corporations, to taxation for proper purposes. Davenport v. R. R. Co., 38 Iowa, 634. This section must be interpreted as imposing the duty, instead of simply granting the power, to tax property of corporations. *Id.* Their property should be taxed to same extent, for same purposes, and at same rates, as that of an individual. *Id.* This section subjects to taxation all corporations for pecuniary profit. Dubuque v. R. R. Co., 39 Iowa, 57. An act releasing railroad company from liability to municipal taxation held to be in conflict with above section. Land Co. v. County, 39 Iowa, 173. Taxation of shares of a corporation which may have some additional value by reason of good will, etc., of the business of a corporation is not unequal taxation. Bank v. Board, 64 Iowa, 140; s. c., 19 N. W. Rep. 889. Different method may be prescribed for assessing railroad property than that provided for property of same nature belonging to other owners. R. R. Co. v. Board, 67 Iowa, 199; s. c., 52 N. W. Rep. 128.

In assessing for taxation, real estate of national

banks is deducted from value of capital stock. Bank v. City, 86 Iowa, 28; s. c., 52 N. W. Rep. 334. Shares of stock in national bank are credits to be deducted from gross amount of credits listed for taxation. *Id.*]

§ 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless insured in time of war for the benefit of the State.

[This section not violated by authorizing aid to be voted by counties toward construction of a railway. County v. R. R. Co., 4 G. Gr. 1. Nor by an act making an appropriation to a corporation to assist it in testing validity of barb wire patents. Wire Co. v. Brown, 64 Iowa, 275; s. c., 20 N. W. Rep. 434.]

§ 12. Subject to the provisions of this article, the general assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the general assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

See Const., art. I, § 21; Statutes, § 1619.

[This section has reference exclusively to corporations for pecuniary purposes. *Ex parte Pritz*, 9 Iowa, 30.]

## CODE OF IOWA—1897.

**Part First. Public Law.****TITLE I. OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE.****CHAPTER III.****Of the Statutes.**

**Sec. 48. Rules of construction.**

**§ 48. (13.)** The word "person" may be extended to bodies corporate.

[So held under statute as to garnishment. *Wales v. Muscatine*, 4 Iowa, 302. Above rule cannot be universally applied, especially in construing criminal statutes, because there are some crimes for which corporations cannot be punished. True rule laid down. *Stewart v. Waterloo*, 71 Iowa, 226; s. c., 32 N. W. Rep. 275.]

**TITLE VII. OF THE REVENUE.****CHAPTER I.****Assessment of Taxes.**

**Sec. 1305. Valuation.**

- 1310. Moneys; credits; annuities; bank notes; stock.
- 1312. Listing, by whom.
- 1318. Merchants.
- 1319. Manufacturers.
- 1320. Agent personally liable.
- 1323. Shares of corporation stock.
- 1324. Valuation of corporation stock.
- 1325. Corporation liable.
- 1327. Real estate of corporations.
- 1329. Failure to make statement.
- 1330. Assessment by executive council.
- 1331. Rate of tax; when due.

**Valuation.**

**§ 1305.** All property subject to taxation shall be valued at its actual value, which shall be entered opposite each item, and shall be assessed at twenty-five per cent. of such actual value. Such assessed value shall be entered in a separate column opposite each item, and is to be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value of property as used in this chapter shall mean its value in the market in the ordinary course of trade. (New.)

**Moneys; credits; annuities; bank notes; stock.**

**§ 1310.** Moneys, credits and corporation shares or stock, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended

to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stock not otherwise taxed in kind, shall be assessed as provided in this chapter. (Code 1873, § 813; Code 1888, § 1289.)

[Taxation of property of a corporation to the corporation, and shares of capital stock to its stockholder, is not unconstitutional. *Cook v. Burlington*, 59 Iowa, 251; s. c., 13 N. W. Rep. 113. Real property of a private corporation is to be assessed under section 1327 of the Code. Shares of stock are, under above section, taxable in hands of owners. Whether this would amount to double taxation, quaere. Appeal of the Des Moines Water Co., 48 Iowa, 324. Stockholder is taxable upon his interest in the corporate property, including surplus, as well as upon his capital stock. *Ins. Co. v. Board*, 37 N. W. Rep. 141. Shares of stock are to be taxed to the owner as his individual property. *Henkle v. Keota*, 68 Iowa, 334; s. c., 27 N. W. Rep. 250. Taxation of stock in savings bank. *Bank v. Mittelbuscher*, 4 McCrary, 361.]

Assessing a corporation for corporate stock is proper, though it owns none, if the shares of the stockholders are not assessed. *Robbins v. Maquin*, 101 Iowa, 580; 70 N. W. Rep. 700. Assessing realty and real stock as "corporation stock," held not to defeat the assessment. *Id.*]

**Listing, by whom.**

**§ 1312. \* \* \*** The property \* \* \* of a body corporate, company, society, or partnership, [is to be listed] by its principal accountant, officer, agent or partner. \* \* \* (Code 1873, § 803; Code 1888, § 1276.)

**Merchants.**

**§ 1318.** Any person, firm or corporation owning, or having in his possession, or under his control within the State, with authority to sell the same, any personal property purchased with a view of its being sold, or which has been consigned to him from any place out of this State to be sold within the same, or to be delivered or shipped by him within or without this State, shall be held to be a merchant for the purposes of this title. In assessing such stocks of merchandisc, the assessor shall require the production of the last inventory taken, and in the assessment-roll shall state the date thereof, and if in the judgment of the assessor such is not correct, or if such time has elapsed since the inventory was taken that it shall have ceased to be reliable as to the value thereof, he shall appraise the same by personal examination. The assessment shall be made at the average value of the stock during the year next preceding the time of assessment, and, if the merchant has not been engaged in business so long,

## Taxation — Code, §§ 1319–1324.

then the average value during such time as he shall have been so engaged, and, if commencing, then the value at the time for assessment, and the provisions of this section shall apply and constitute the method of taxation of a corporation whose business or principal business is of a like character, and shall be in lieu of any tax on the corporate shares. (Code 1873, § 815; Code 1888, § 1292.)

**Manufacturers.**

§ 1319. Any person, firm or corporation who purchases, receives or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, packing of meats, refining, purifying, or by the combination of different materials, with a view to making gain or profit by so doing, and selling the same, shall be held a manufacturer for the purposes of this title, and he shall list for taxation such property in his hands; but the average value thereof to be ascertained as in the preceding section, whether manufactured or unmanufactured, shall be estimated upon those materials only which enter into its combination or manufacture. Machinery used in manufacturing establishments shall, for the purpose of taxation, be regarded as real estate. Corporations organized under the laws of this State for pecuniary profit, and engaged in manufacturing as defined by this section, and which have their capital represented by shares of stock, shall, through their principal accounting officers, list their real estate, personal property and moneys and credits in the same manner as is required of individuals. The owners of capital stock of manufacturing companies, as herein provided for, having listed their property as above directed, shall be exempt from assessment and taxation on such shares of capital stock. (Code 1873, § 816; 18 Gen. Ass., ch. 57, §§ 1, 2; Code 1888, §§ 1293-5.)

[A corporation manufacturing sewer pipes and drain tile is assessable as a manufacturer under above section. App. of Iowa Pipe & Tile Co., 70 N. W. Rep. 115.

In assessing a manufacturer under above section, labor and fuel are not to be considered. *Id.* See *Dean v. Solon*, 66 N. W. Rep. 182.]

**Agent personally liable.**

§ 1320. Any person acting as the agent of another, and having in his possession or under his control or management any money, notes and credits, or personal property belonging to such other person, with a view to investing or loaning or in any other manner using or holding the same for pecuniary profit, for himself or the owner, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuses to render the list or to swear to the same, the amount of such money, property, notes or credits may be

listed and valued according to the best knowledge and judgment of the assessor. (Code 1873, § 817; Code 1888, § 1296.)

**Shares of corporation stock.**

§ 1323. The shares of stock of any corporation organized under the laws of this State, except those which are not organized for pecuniary profit, and except corporations otherwise provided for in this act, shall be assessed to the owners thereof, at the place where its principal business is transacted, the assessment to be on the value of such shares on the first day of January in each year; but in arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them, either in this State or elsewhere, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation, except real estate situated within the State, shall not be otherwise assessed. Every such corporation annually, on or before the twenty-fifth day of January, shall furnish to the assessor of the assessment district in which its principal place of business is located a verified statement, showing specifically, with reference to the year next preceding the first day of January then last past:

1. Total authorized capital stock and number of shares thereof;
2. Number of shares of stock issued and par value of each;
3. Amount paid into the treasury on each share and the total capital paid in;
4. Description and value of each tract of real estate owned by said corporation;
5. Date, rate per cent. and amount of each dividend declared, and the amount of capital on which such dividend was declared;
6. Gross and net earnings, respectively, during the year, and amount of surplus;
7. Amount of profit added to sinking fund;
8. Highest price of sales of stock between the first and tenth days of January of the current year;
9. Highest price of sales of stock during the preceding year, and average price of such sales.

**Valuation of corporation stock.**

§ 1324. If the assessor is not satisfied with the appraisement and valuation furnished as provided in the preceding sections, he may make a valuation of the shares of stock based upon the facts contained in the statements above required, or upon any information within his possession, or that shall come to him, and shall, in either case, assess to the owners the stock at the valuation made by him. If the officers of any corporation refuse or neglect to make the statement required, the assessor shall make a valuation of the capital stock of the defaulting corporation from the best information obtain-

## Taxation — Code, §§ 1325–1331.

able. In deducting, under the provisions of this chapter, the value of real estate from the actual value of the properties, shares or capital stock of any person, firm, association or corporation, the actual value at which said real estate is valued by the assessor or other taxing officer or body where the same is assessed shall be the value thereof.

**Corporation liable.**

§ 1325. The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be payable by the corporation in the same manner and under the same penalties as in the case of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this State, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his post-office address, as the same appears upon the books of the company, or is known by its secretary.

**Real estate of corporations.**

§ 1327. All real estate owned by corporations, returned in their statements as part of their assets for purposes of taxation, shall be valued therein for such assessment as other real estate, except as otherwise provided, and shall not be otherwise assessed.

**Failure to make statement.**

§ 1329. Upon the receipt of said statements from the several companies, the auditor of State shall lay the same before the executive council, and if it shall deem the same insufficient and that further information is requisite, it shall require the officer making same to make such other or further statement as it may desire. In case of failure or refusal of any company to make out or deliver to the auditor of State the statements required in this chapter, such company shall forfeit and pay to the State of Iowa one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the State, and on the relation of the auditor of State, and such penalty, when collected, shall be paid into the general fund of the state. (17 Gen. Ass., ch. 59, §§ 1, 2.)

**Assessment by executive council.**

§ 1330. The executive council shall, at its meeting on the second Monday in July in each year, proceed to find the actual value of the property of such companies in this State, taking into consideration the information obtained from the statements above required, and any further information they can obtain, using the same as a means for determining the actual cash value of the property of such companies within this State; also taking into consideration the valuation of all property of such companies, including franchises and the use of the property in connection with lines outside the State, and making such deductions as may be necessary on account of extra value of property outside the State as compared with the value of property in the State, in order that the actual cash value of the property of the company within this State may be ascertained; and, after finding the actual cash value of the property of the company within this State, it shall deduct from the total amount of same the actual value of the property belonging to the company assessed for taxation in local taxing districts in this State, and shall assess the property of such company at its taxable value as thus found. (Id.)

**Rate of tax; when due.**

§ 1331. The council shall also at said meeting determine the rate of tax to be levied and collected upon said assessments, which shall be equal, as nearly as may be, to the average rate of taxes, State, county, municipal and local, levied throughout the State during the previous year, which rate shall be ascertained from the records and files in the auditor's office, and said tax shall be in full of all taxes, except on real estate and special assessments, and shall become due and payable at the State treasury on the first day of February following the levy thereof, and if not so paid the State treasurer shall collect the same by distress and sale of any property belonging to such company in the State, in the same manner as is required of the county treasurers in like cases; and the record of the executive council in such case shall be sufficient warrant therefor. (Id.)

**TITLE IX. CORPORATIONS.****CHAPTER I.****Corporations for Pecuniary Profit.**

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## Who may incorporate.

§ 1607. Any number of persons may become incorporated for the transaction of any lawful business, but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided. (Code 1873, § 1058; Code 1888, § 1608.)

See Const., art. 8, § 1.

[A mutual insurance company may incorporate hereunder. Corey v. Sherman, 60 N. W. Rep. 232.]

## Single person.

§ 1608. Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling himself to all the privileges and immunities provided herein, but if he adopts the name of an individual or individuals as that of a corporation, he must add thereto the word "incorporated." (Code 1873, § 1088; Code 1888, § 1638.)

## Powers.

§ 1609. Among the powers of such corporations are the following:

1. To have perpetual succession;

Duration. § 1618. Dissolution. § 1617. Forfeiture. §§ 1622, 4313-4335. Expiration. § 1629.

2. To sue and be sued by its corporate name;

Estoppel to deny corporate existence when sued. § 1636. Foreign corporation may bring suit. § 3469. Venue of actions. §§ 3497-3500. Pleading. §§ 3580 et seq. Security for costs. §§ 3847-3848. Attachments and executions. § 3878ff. Actions to test corporate rights. § 4313ff. Injunctions against corporations. § 4354. Process upon an indictment against a corporation. § 5309ff. Arraignment. § 5310.

[A corporation must sue and be sued in its corporate name. R. R. Co. v. Keisel, 43 Iowa, 39.

A stockholder may maintain action to restrain corporation from acts in excess of corporate

power. Teachout v. St. R. Co., 75 Iowa, 722; s. c., 38 N. W. Rep. 145.

The use of the word "railroad" instead of "railway" in indictment for embezzling funds of the corporation, held not to be material. State v. Goode, 68 Iowa, 593; s. c., 27 N. W. Rep. 772.

A railroad company cannot, in a legal proceeding, be properly designated by initial letters of its name, even though it may be shown that it is popularly known by such initial letters. Accola v. R. R. Co., 70 Iowa, 185; s. c., 30 N. W. Rep. 503. A corporate name is that which is adopted in the articles of incorporation. If name is changed it must be done by change of articles, and the best evidence as to contents of articles is the articles themselves; therefore, held, that parol evidence of a change of name was not sufficient. R. R. Co. v. Keisel, *supra*. Where name of corporation consists of several words, the omission, alteration or transposition of any of the words in the name used, if the words in the name used, were synonymous with the true name, is not a misnomer. Martin v. R. R. Co., 59 Iowa, 411; s. c., 13 N. W. Rep. 424. A variance from true name of a corporation will defeat its contract if it appears that the corporation was intended to be bound and described in the instrument. Athearn v. Millersburg, 33 Iowa, 105. Where note was made payable to order of "The Equitable Life Insurance Co. of Iowa at its office," and was dated at the "office of the Equitable Life Ins. Co., Des Moines," held, that although the two names were not identical, it was reasonably apparent that they referred to the same corporation. Ins. Co. v. Gleason, 66 Iowa, 47; s. c., 8 N. W. Rep. 790.

Declaration of persons related to corporation may be excluded from evidence when it is not shown that such persons were authorized to bind the corporation. McNamara v. Corporation, 88 Iowa, 502; s. c., 55 N. W. Rep. 322. Admission by authorized agents of corporation is admissible. *Id.*

That directors allowed fraudulent judgment by default, is not *prima facie* fraudulent. Peatman v. Centreville L. H. & P. Co., 100 Iowa, 245; 69 N. W. Rep. 541.

An appointment of a receiver does not of itself prevent an action against the corporation alone. Weigen v. Council Bluffs Ins. Co., 104 Iowa, 410; 73 N. W. Rep. 862 (1898).]

3. To have a common seal, which it may alter at pleasure;

Contract of corporation need not be under seal. § 1609 (6), note.

[Signature of officer of a corporation, executing an instrument, being proved, seal will be presumed genuine in absence of proof to contrary. Burden of proof is upon party objecting to the instrument. Blackshire v. Homestead Co., 39 Iowa, 624; R. R. Co. v. Lewis, 53 Id. 101; s. c., 4 N. W. Rep. 842; Morse v. Beale, 68 Iowa, 463; s. c., 27 N. W. Rep. 461.

The seal itself is *prima facie* evidence that it was affixed to the instrument legally, by the proper authority. Goodnow v. Oakley, 68 Iowa, 25; s. c., 25 N. W. Rep. 912; Blackshire v. Homestead Co., *supra*.

Corporations of all kinds may be bound by contracts not under seal. Merrick v. Road Co., 11 Iowa, 74.

A valid written contract may be made by a private corporation in this State without the use of a seal, even though such contract be one out of the ordinary course of business of the corporation. Water Co. v. Lumber Co., 85 Iowa, 112; s. c., 52 N. W. Rep. 108.]

4. To render the interests of the stockholders transferable;

See § 1626, and note.

[By-laws of a bank provide that no transfer of stock should be made without consent of directors

## Power to contract — Code, § 1C09.

by any stockholder who is liable as principal debtor or otherwise. Held, that the certificate and the by-laws constitute a contract between the bank and the defendant, creating a lien upon defendant's stock superior to that of an attaching creditor. *Bank v. Haney*, 87 Iowa, 101; s. c., 54 N. W. Rep. 61.]

5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.

See §§§ 1616, 1632.

[Corporation may exempt the private property of its members from liability for corporate debts. *Spence v. Const. Co.*, 36 Iowa, 407; *Larson v. Dayton*, 52 Iowa, 54; s. c., 3 N. W. Rep. 645.

The only case in which private property of members becomes liable for corporate debts is that provided in section 1618. *Bank v. Davies*, 43 Iowa, 424.

Individual liability only extends to amount of unpaid subscription to stock. *Warfield v. Canning Co.*, 72 Iowa, 666; s. c., 34 N. W. Rep. 467.

The fact that one corporation is a stockholder in another, stockholders of former are not thereby made stockholders in latter, and cannot be held individually as such. *Langan v. Const. Co.*, 49 Iowa, 317. Exemption of corporators from personal liability must be authorized by statute. *Kaiser v. Bank*, 56 Iowa, 104; s. c., 8 N. W. Rep. 772. Stockholder receiving stock at less than its par value cannot escape liability by transferring it to an insolvent. *Wisbard v. Hausen*, 99 Iowa, 307; 68 N. W. Rep. 691.]

6. To make contracts, acquire and transfer property, possessing the same powers in such respects as natural persons.

Obligation of contracts inviolable. *Const. art. I, § 21*. Alien corporation cannot acquire lands. § 2889. Corporation may loan money from its sinking fund. § 1630. Pools and trusts prohibited. § 5060ff.

[Corporations possess all incidental and implied powers necessary or proper to carry into effect its general and express powers in respect to the transaction of its business. *Ins. Co. v. Packet Co.*, 32 Iowa, 224.

Corporations possess such powers only as are expressly conferred upon them and such as are necessary to carry out those expressed powers. *Teachout v. Ry. Co.*, 75 Iowa, 722; s. c., 38 N. W. Rep. 145.

For the purpose of carrying out its objects the powers of a corporation are as extensive as those of an individual, where they are not expressly limited, and it may borrow money and execute a mortgage upon the corporate property. *Thompson v. Lambert*, 44 Iowa, 239.

Power to mortgage its property is incident to ordinary power of a corporation. *Dunham v. Isett*, 15 Iowa, 284.

The simple act of becoming surety for another is not incidental to the prosecution of any business where power to borrow money may necessarily be implied, which may be exercised by issuance of negotiable bonds. *Gas Co. v. West*, 50 Iowa, 16.

Where its articles authorized a corporation to purchase "any real estate or other property," it was not beyond its powers to purchase its own stock. *Lumber Co. v. Foster*, 49 Iowa, 25. Unless restrained by statute, one corporation may sell its property to another, if done in good faith. *Warfield v. Canning Co.*, 72 Iowa, 666; s. c., 34 N. W. Rep. 467; *State v. Ry. Co.*, 71 Iowa, 410; s. c., 32 N. W. Rep. 409. Mortgage given by a corporation to secure a debt in excess of limit prescribed by its articles is not for that reason invalid, even though given to directors and shareholders as

preferred creditors. *Id.; Garrett v. Plow Co.*, 70 Iowa, 697; s. c., 29 N. W. Rep. 395.

A private corporation is responsible, at least to extent of the consideration received, for indebtedness assumed to be contracted in excess of limit imposed by its articles. *Humphrey v. Merc. Assn.*, 50 Iowa, 607.

The doctrine of ultra vires will be applied only when contracts remain wholly executory. *Thompson v. Lambert*, 44 Iowa, 239.

A corporation cannot retain benefits derived from an ultra vires contract, and then treat the contract as entirely void. *Lucas v. Transfer Co.*, 70 Iowa, 541; s. c., 30 N. W. Rep. 771. Every person dealing with a corporation is charged with knowledge of its power as set out in its recorded articles of incorporation. *Id.* Where a corporation contracts with third parties in regard to matters apparently within its power, but which are in fact beyond them, the corporation must be held liable for loss or damage to such third parties. *Id.*

A corporation may make a binding contract in writing not under seal, and may also be bound by verbal contracts. And may ratify the contract of an officer made outside the usual scope of his duties. *Merrick v. Road Co.*, 11 Iowa, 74. A corporation may be bound by an implied contract. *Bank v. Ins. Co.*, 66 Iowa, 617; s. c., 24 N. W. Rep. 239.

The articles of incorporation, together with the general incorporation laws, create the same relation between State and the corporation which would exist if such general laws and articles were embodied in a special legislative charter. *State v. Ry. Co.*, 71 Iowa, 410; s. c., 32 N. W. Rep. 409.

Contract by corporation to surrender its stock held to be valid in absence of any expressed prohibition. *Rollins v. Carriage Co.*, 80 Iowa, 380; s. c., 45 N. W. Rep. 1037.

Purchaser of stock may question validity of contract made by the corporation on ground that it is ultra vires, though such contract was entered into before the purchase of the stock. *Carson v. Gaslight Co.*, 80 Iowa, 638; s. c., 45 N. W. Rep. 1068.

A corporation has incidental power to make any contract necessary and proper to accomplish the objects of its creation. *Wardner, etc. Co. v. Jack*, 82 Iowa, 435; s. c., 48 N. W. Rep. 729. An officer or stockholder may enforce judgment for payment of claims against the corporation. *Rollins v. Carriage Co.*, *supra*.

A granting of power to make contracts gives a corporation power to sell and make conveyances of its realty. *Buell v. Buckingham*, 16 Iowa, 284. And limitation upon power to sell implies a limitation on power to convey. *Bank v. Dubuque*, 15 Iowa, 394.

Question of power of corporation to hold land is a question between the corporation and the State, and cannot be raised by third party. *R. R. Co. v. Lewis*, 53 Iowa, 101; s. c., 4 N. W. Rep. 842.

Can general superintendent of a railway be presumed to have power to alienate or charge its lands? *Kipp v. Kendall*, 55 Iowa, 65; s. c., 7 N. W. Rep. 417.

Power of such superintendent not to be proved by proving what president of company said about it. *Id.* Restriction upon power to sell property, not an inhibition upon power to mortgage it. *Krider v. Trustees*, 31 Iowa, 547.

If a company professing a corporate existence which it does not possess, acquires, in its corporate name, the property of another, and conveys the same, the sufficiency of such conveyance or transfer may be inquired into collaterally. *Carey v. R. R. Co.*, 5 Iowa, 358. And the fact whether the company ever had any corporate existence, so as to enable it to take and hold property, may be inquired into collaterally. *Id.* An allegation of fraud and misrepresentation by a corporation is sufficient without alleging that its officers or agents did not exceed their authority. *Carey v. R. R. Co.*, 5 Iowa, 358.

A corporation is not chargeable with notice of transactions between its officers acting as private individuals in a private transaction. *Bank v. Gifford*, 47 Iowa, 575.

## Articles; debts — Code, §§ 1610, 1611.

Director not necessarily precluded from becoming purchaser at a foreclosure sale of property of the corporation. *Hallam v. Hotel Co.*, 56 Iowa, 178; s. c., 9 N. W. Rep. 111.

A promissory note signed by president and secretary is not binding on the corporation in absence of any showing of authority or custom to execute notes. *Catron v. Soc.*, 46 Iowa, 106.

Contracts between officers of a corporation, by which they were to derive advantage or profit from their positions, by purchase made nominally for the company but really for themselves, is void as against the other stockholders. *Land Co. v. Walker*, 50 Iowa, 376.

A director may become a creditor of a corporation and advance it money, or sell it property, and may enforce the obligation therefor. *Garrett v. Plow Co.*, 70 Iowa, 697; s. c., 29 N. W. Rep. 395.

In the absence of a showing to the contrary the president is presumed to have authority to act in all matters within the ordinary course of corporate business. *White v. Elgin Creamery Co.*, Sup. Ct. Iowa, 79 N. W. Rep. 283 (1899). See also same case on ratification by corporation of acts of agents.

Where a manager is practically the corporation and does business in its or his own name interchangeably, in a fraudulent conveyance by him to the corporation, the latter has notice of fraud. *Anderson v. Keiley*, 90 Iowa, 554; 58 N. W. Rep. 909; distinguishing *Hummel v. Bank*, 75 Iowa, 690; 37 N. W. Rep. 954.

One who, though not a stockholder, has acted as director of a corporation for two years, is liable as a director in his dealings with the corporation. *Stetson v. Northern Inv. Co.*, 104 Iowa, 393; 73 N. W. Rep. 869 (1898).

A corporation which has retained possession of property purchased from a director for a long period will be presumed to have ratified the contract. *Stetson v. Northern Inv. Co.*, 104 Iowa, 393; 73 N. W. Rep. 869 (1898).

Power of officer to waive forfeiture provided by by-laws. *Moore v. Order of Railway Conductors*, 90 Iowa, 721; 57 N. W. Rep. 623.

Where directors give authority to president and secretary to execute a note for a certain sum and interest, the insertion of an attorney's fee clause in the note was in excess of the authority, and not binding on the corporation. *Hardin v. Const. Co.*, 78 Iowa, 726; s. c., 43 N. W. Rep. 543.

A corporation organized for manufacture and sale of musical instruments may take from its agent, in payment of indebtedness due from him, a note of a third party belonging to him. *Organ Co. v. Reddish*, 51 Iowa, 55; s. c., 49 N. W. Rep. 1048.

In absence of express authority, officers cannot sell stock for less than par. *Olpahnt v. Min. Co.*, 63 Iowa, 32; s. c., 19 N. W. Rep. 212; *Jackson v. Traer*, 64 Iowa, 469; s. c., 20 N. W. Rep. 761. Nor accept property largely in excess of its value in payment of stock subscription. *Osgood v. King*, 42 Iowa, 478.

Increase of salary of officer, by action of board of directors, validity of. *Clark v. Coal Co.*, 86 Iowa, 436; s. c., 53 N. W. Rep. 291.

As to powers of corporations organized under laws of Iowa, see *Reichwald v. Hotel Co.*, 108 Ill. 439; *Glover v. Wells*, 40 Ill. App. 353.]

7. To establish by-laws, and make all rules and regulations necessary for the management of its affairs. (Code 1873, § 1059; Code 1888, § 1609.)

Copy of by-laws must be kept posted. § 1624. By-laws subject to legislative control. § 1619.

[The general power conferred upon directors to conduct affairs of a corporation carries with it as a necessary incident implied powers essential to give effect to general powers. Hence, adoption of a by-law, even in the absence of express power, is not without color of authority. *Hygum v. Ins. Co.*, 11 Iowa, 26. A by-law is entitled to a reason-

able construction. Id. 25. By-law of insurance company printed in a policy is binding upon holder of policy. Id. 21.]

## Articles adopted and recorded.

§ 1610. (As amended March 28, 1898, and April 7, 1898.) Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor, and the recorder must, within five days thereafter, indorse thereon the time when the same were filed, and the book and page where the record will be found. Said articles thus indorsed shall then be forwarded to the secretary of State, and be by him recorded in a book kept for the purpose. Such corporation shall pay to the secretary of State, before a certificate of incorporation is issued, a fee of twenty-five dollars, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Should any corporation increase its capital stock, it shall pay a fee to the secretary of State of one dollar for each one thousand dollars of such increase, but in no event shall a fee in excess of two thousand dollars be charged under the provision of this section. The recording fee shall be paid in all cases. Farmers' mutual co-operative creamery associations and corporations organized for the manufacture of sugar from beets grown in the State of Iowa shall be exempt from the payment of the incorporation fee provided herein. (Code 1873, § 1060; Code 1888, § 1608.)

Change of articles. § 1615. Individual liability for failure to comply. § 1616. Single individual may incorporate. § 1608.

[Failure to file articles in office of secretary of State does not render stockholder individually liable. *Bank v. Davies*, 43 Iowa, 424; *Eisfeld v. Kenworth*, 50 id. 389.]

## Limit of indebtedness.

§ 1611. Such articles must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which in no case, except risks of insurance companies, and liabilities of banks not in excess of their available assets, not including their capital, shall exceed two-thirds of its capital stock. But the provisions of this section shall not apply to the bonds or other railway or street railway securities, issued or guaranteed by railway or street railway companies of the State, in aid of the location, construction and equipment of railways or street railways, to an amount not exceeding sixteen thousand dollars per mile of single track, standard gauge, or eight thousand dollars per mile of single track, narrow gauge, lines of road for each mile of railway or street rail-

## Place of business; notice, etc.—Code, §§ 1612–1615.

way actually constructed and equipped. Nor shall the provisions of this section apply to the debentures or bonds of any company incorporated under the provisions of this chapter, the payment of which shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers thereof; such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unencumbered real estate worth at least twice the amount loaned thereon. (Code 1873, § 1061; Code 1888, § 1611.)

**Personal liability of shareholders.** §§ 1609 (5); 1616, and note, 1631.

[Incurring of liabilities greater than here provided does not render stockholders individually liable. *Langan v. Const. Co.*, 49 Iowa, 317. A private corporation is responsible at least to the extent of the consideration received for indebtedness assumed to be contracted in excess of limit imposed by the articles of incorporation. *Humphrey v. Merc. Assn.*, 50 Iowa, 607. In such case the corporation is estopped from settling up the limit. *Id.* A debt of a corporation beyond limit prescribed by its charter is not invalid, even though held by the directors. The latter are in no different position than that of any creditor, if debt was contracted in good faith. *Garrett v. Plow Co.*, 70 Iowa, 697; s. c., 29 N. W. Rep. 395; *Warfield v. Canning Co.*, 72 Iowa, 666; s. c., 34 N. W. Rep. 467.

Provision in articles of incorporation that the total indebtedness "shall not at any one time exceed three hundred dollars, except by a majority vote of the stockholders present at a called or annual meeting," is a substantial compliance with provisions of above section. *Thornton v. Balcom*, 85 Iowa, 198; s. c., 52 N. W. Rep. 190.

Above section does not require that full amount of capital stock authorized by the articles shall be subscribed before corporation may begin business, when the articles provide that the corporation may do so when a less amount therein stated is subscribed. *Sweeney v. Talcott*, 85 Iowa, 103; s. c., 52 N. W. Rep. 106.

Where a corporation had exceeded the statutory limit of indebtedness and had executed a mortgage on its property to secure the debt, which was not of itself opposed to public policy, neither the corporation which was insolvent, nor a creditor or incumbrancer whose rights accrued subsequent to the mortgage and with notice thereof can question it. *Beach v. Wakefield*, Sup. Ct. Iowa, 76 N. W. Rep. 688 (1898).]

**Place of business; list of officers.**

§ 1612. If the corporation transacts business in this State, the articles shall fix its principal place of business, which must be in this State, and in charge of an agent of the corporation, at which place it shall keep its stock and transfer books and hold its meetings. The corporation shall annually, in January, file with the secretary of State a list of its officers and directors, and any change in the location of its place of business made by a vote of the stockholders. (New.)

**Notice published; what to contain.**

§ 1613. A notice must be published, for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of transacting business;
2. The general nature of the business to be transacted;
3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in;
4. The time of the commencement and termination of the corporation;
5. By what officers or persons the affairs of the corporation are to be conducted, and the times when and manner in which they will be elected;
6. The highest amount of indebtedness to which it is at any time to subject itself;
7. Whether private property is to be exempt from corporate debts.

Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of State, and shall be evidence of the fact. (Code 1873, §§ 1062–1063; Code 1888, § 1612.)

As to contracts in excess of limits of indebtedness, see § 1609, note. Exemption of private property from corporate debts. See § 1609 (5), note.

[Where the published articles of incorporation did not state when corporation was to begin and terminate, nor where its principal place of business was to be, held not to be a substantial compliance with the statute. *Clegg v. Grange Co.*, 61 Iowa, 121; s. c., 15 N. W. Rep. 865.

When auditor in issuing certificates to a corporation cannot determine the exclusive use of a name. *Grand Lodge v. Graham*, 65 N. W. Rep. 837.

A corporation cannot appropriate the exclusive use of a name which was in use by another organization, and had a well-defined meaning, at the time of the incorporation. *Id.*

Acts of a corporation will not be valid unless publication of notice of organization is made as required by law. *Eisfeld v. Kenworth*, 50 Iowa, 389.

Publication of an abstract of the articles of incorporation, containing all the requirements of the notice provided for by statute and stating that "the indebtedness of the company shall not exceed three hundred dollars at any one time," is sufficient notice under above section. *Thornton v. Balcom*, 85 Iowa, 198; s. c., 52 N. W. Rep. 106.]

**May begin business.**

§ 1614. The corporation may commence business as soon as the certificate is issued by the secretary of State, and its acts shall be valid if the publication in a newspaper is made within three months from date of such certificate. (Code 1873, § 1064; Code 1888, § 1614.)

**Individual liability to comply. § 1616.**

[A corporation cannot be deprived of its franchises without proceedings instituted for the purpose. *Bank v. Davies*, 43 Iowa, 424. Authority to commence business does not depend upon all stock being subscribed. *Johnson v. Kessler*, 76 Iowa, 411. As to publication, see *Thornton v. Balcom*, 85 Iowa, 198.]

**Change of articles.**

§ 1615. Changes in any of the provisions of the articles may be made at

## Stockholder's liability; dissolution; duration — Code, §§ 1616-1618.

any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved, and published as the original articles are required to be. Such changes, however, need only be signed and acknowledged by such officers of the corporation as may be designated to perform such act by the stockholders. (Code 1873, § 1065; Code 1888, § 1615.)

Articles are subject to legislative control. § 1619.

[A change in the articles, if properly made, is binding upon all stockholders. *R. R. Co. v. White*, 5 Iowa, 409. But if such change adds a new and different business to that originally contemplated, stockholders who do not assent to the change will be absolved from liability of their subscriptions. *Id.* But not where change merely relates to time of payment of installment of subscription to stock. *Id.* A corporation having entered into a contract authorized by its articles, and received the consideration therefor, cannot thereby escape liability upon ground that amended articles had not been recorded. *Humphrey v. Assn.*, 50 Iowa, 607. Articles of incorporation of company organized for pecuniary profit can be amended, how. *Day v. Ins. Co.*, 75 Iowa, 694; s. c., 38 N. W. Rep. 113. It is only a material or radical change which will release a subscriber from liability on his subscriptions. *Assn. v. Neill*, 31 Iowa, 95; *R. R. Co. v. Preston*, 35 id. 115.]

## Individual property liable.

§ 1616. A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein. (Code 1873, § 1068; Code 1888, § 1618.)

See §§ 1609 (5), 1631.

[Under this section failure to file articles does not render stockholders individually liable. *Bank v. Davies*, 43 Iowa, 424; *Stokes v. Findlay*, 4 McCrary, 205; *Eisfeld v. Kenworth*, 50 Iowa, 389. In the clause "in relation to organization and publicity" the word "and" should be construed as "or." Failure in either respect will render stockholders individually liable. *Id.* So held in case of failure to publish any notice whatever. *Id.*; *Marshall v. Harris*, 55 Iowa, 182; s. c., 7 N. W. Rep. 509.]

Where articles did not state principal place of business or time of commencing business, there was such failure to comply with requirements as to notice as to render stockholders individually liable. *Clegg v. Grange Co.*, 61 Iowa, 121; s. c., 15 N. W. Rep. 865. But failure to post a copy of by-laws and statement of amount of capital subscribed, etc., will not render stockholders liable. *Langan v. Const. Co.*, supra. Incurring of liabilities beyond that allowed by statute does not render stockholders individually liable. *Id.* Stockholders claiming exemption under provisions of General Incorporation Law must show that company was legally incorporated; an attempt to incorporate and doing business under claim of incorporation, are not sufficient to create such exemption. *Kaiser v. Bank*, 56 Iowa, 104; s. c., 8 N. W. Rep. 772. Slight irregularities or omissions, sufficient

to sustain action for forfeiture of charter, are insufficient to sustain action to enforce individual liability of stockholder. Otherwise if irregularity be material. *Id.* In suits against individuals claiming exemption from liability under General Incorporation Law, a more strict compliance with statutory requirements must be shown than in case plea of null corporation is set up in suit between a corporation and the stockholder or other individual, on liability contracted. *Id.* By express provision stockholders in railway companies are not liable beyond amount of their stock. *Bank v. Davies*, 43 Iowa, 424. A construction company has power to construct and operate a railway as a railway corporation. *Langan v. Const. Co.*, 49 Iowa, 317. Liability of members of unincorporated associations. *Reding v. Anderson*, 72 Iowa, 498; s. c., 34 N. W. Rep. 300. While a material defect in organization may render corporations incidentally liable as to creditors, as between themselves their rights are to be determined by the agreements in the articles. *Heald v. Owen*, 79 Iowa, 23; s. c., 44 N. W. Rep. 210.

Persons dealing with a corporation as such, before time that notice of incorporation is required to have been published, is not entitled, under section 1616, to have the individual property of stockholders subjected to payment of a debt of the corporation growing out of such dealing, upon ground that publication of the notice was not completed before expiration of three months after recording of articles as required by section 1614. Actual notice supersedes publication of. *Thornton v. Balcom*, 85 Iowa, 198; s. c., 52 N. W. Rep. 190.]

## Dissolution; notice of.

§ 1617. A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization. (Code 1873, §§ 1066-1067; Code 1888, §§ 1616-1617.)

Duration. § 1616. Forfeiture. § 1622. Expiration. § 1629. Sale of franchise under execution does not dissolve. § 1634.

[This section will not prevent a sale of all the property by a majority only of the capital stock, when circumstances demand it, even if such sale result in dissolution of corporation. *Price v. Holcomb*, 89 Iowa, 123; 56 N. W. Rep. 407.]

## Duration; how renewed.

§ 1618. Corporations for the construction of any work of internal improvement, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; but in either case they may be renewed from time to time for the same or shorter periods, within three months before or after the time for the termination thereof, if a majority of the votes cast at any regular election, or special election called for that purpose, be in favor of such renewal, and if those wishing such renewal will purchase the stock of those opposed thereto at its real value. (Code 1873, § 1069; Code 1888, § 1619.)

Dissolution. § 1617. Forfeiture. § 1622. Expiration. § 1629.

## Fraud; diversion; forfeiture; by-laws — Code, §§ 1619–1624.

[An adjourned session of a regular annual meeting is not a special meeting, notice of which to shareholders is required. *Western Imp. Co. v. Des Moines Nat. Bk.*, 103 Iowa, 455; 72 N. W. Rep. 657 (1897).]

**Legislative control.**

§ 1619. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used or employed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. (Code 1873, § 1090; Code 1888, § 1640.)

Articles may be changed by stockholders. § 1615.  
See Const., art. I, § 21; art. VIII, § 12.

**Fraud; penalty for.**

§ 1620. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud. (Code 1873, § 1071; Code 1888, § 1621.)

## Keeping false accounts. § 1623.

Mere intention to deceive not sufficient to render stockholders liable. There must be some act fraudulently done. *Miller v. Bradish*, 69 Iowa, 278; s. c., 28 N. W. Rep. 594. Mere fact that a person is a stockholder in an insolvent corporation does not render him liable; a fraud in such case is not to be presumed. *Spense v. Const. Co.*, 36 Iowa, 407. In action to make individual officers liable under above section, proof of absence of intentional fraud and diversion of assets to their own use is a complete defense. This section applies only to those guilty of intentional fraud. *Hoffman v. Dickey*, 54 Iowa, 185; s. c., 6 N. W. Rep. 174. In an action for damages under this section, the particular respect in which defendant failed to comply with articles, or the particular act of deception, resulting in damage to plaintiff, must be specified. *White v. Hosford*, 37 Iowa, 566. Officers of bank illegally organized held personally liable. *Allen v. Pegram*, 16 Iowa, 163.

Stock issued by a mining company to fuel agent of a railway company, he agreeing to make the purchase of coal for railway company from mining company, receiving compensation for his services as such agent, and dividends from said mining corporation, held, that such stock was not issued for a fraudulent purpose. *Clark v. Coal Co.*, 86 Iowa, 436; s. c., 53 N. W. Rep. 291. Such a contract is not void as against public policy, but voidable only. Id.]

**Diversion of funds.**

§ 1621. The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the no-

tice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of the preceding section; and such dividends, or their equivalent, in the hands of the stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section. (Code 1873, §§ 1072-1073; Code 1888, §§ 1622-1623.)

[To make officers liable under this section it must appear that entire property of corporation is not sufficient to pay its indebtedness. Dividends may be declared though corporation has not cash on hand sufficient to pay all its liabilities. *Miller v. Bradish*, 69 Iowa, 278; s. c., 28 N. W. Rep. 594. The amount of capital stock is not to be included in determining whether liabilities of corporation exceed its funds so as to render declaration of dividend illegal. Id. Sufficient if corporation has enough assets to pay all its debts at the time dividend is paid. Id.]

**Forfeiture.**

§ 1622. Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of the two preceding sections shall work a forfeiture of the corporate privileges, to be enforced as provided by law. If the indebtedness of any corporation shall exceed the amount of indebtedness permitted by law, the directors and officers of such corporation knowingly consenting thereto shall be personally and individually liable to the creditors of such corporation for such excess. (Code 1873, §§ 1074-1075; Code 1888, § 1624.)

See § 4313ff.

**Keeping false accounts.**

§ 1623. The intentional keeping of false books or accounts shall be a misdemeanor on the part of any officer, agent or employee of the corporation guilty thereof, or of any one whose duty it is to see that such books or accounts are correctly kept. (Code 1873, § 1075; Code 1888, § 1625.)

**By-laws posted.**

§ 1624. A copy of the by-laws of the corporation, with names of all its officers, must be posted in the principal place of business subject to public inspection. (Code 1873, § 1076; Code 1888, § 1626.)

See § 1609 (7).

## Transfer of shares, etc.—Code, §§ 1625–1627.

[Mandamus is the proper remedy to compel a corporation to post its by-laws, but plaintiff must prove a personal interest entitling him to the writ. *Boardman v. Marshalltown Grocery Co.*, Sup. Ct. Iowa, 75 N. W. Rep. 343 (1898).]

## Statement of stock and indebtedness.

§ 1625. A statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way, must also be kept posted in like manner, which shall be corrected as often as any material change takes place in relation to any part of the subject-matter thereof. (Code 1873, § 1077; Code 1888, § 1627.)

Failure to comply with sections 1625, 1626 does not render stockholders individually liable. See § 1616, note.

## Transfer of shares.

§ 1626. The transfer of shares is not valid, except as between the parties thereto, until regularly entered upon the books of the company, showing the name of the person by and to whom transferred, the number or other designation of the shares, and the date of the transfer; but such transfer shall not exempt the person making it from any liability of said corporation created prior thereto. Its books must be so kept as to show the original stockholders, their interests, the amount paid on their shares, and all transfers thereof; which books, or a copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. When any shares of stock shall be transferred to any person, firm or corporation as collateral security, such person, firm or corporation may notify in writing the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice, and until written notice that said stock shall have ceased to be held as collateral security, said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock, without any actual transfer on the books of such corporation of such stock. In such case, it shall be the duty of the secretary or cashier of the corporation or of the person or firm to which such stock shall have been transferred as collateral security at once, upon its ceasing to be so held, to inform the secretary of the corporation issuing such stock of such fact. The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral, subject to public inspection. No holder of stock as collateral security shall be liable for assessments on the same. (Code 1873, § 1078; Code 1888, § 1628; amended 1896, April 14.)

See § 1609 (4).

[Under above section, a stockholder who transfers his stock remains liable to creditors of the corporation whose debts were contracted before the transfer to the amount unpaid on the stock. *White v. Green*, Sup. Ct. Iowa, 70 N. W. Rep. 182. Stockholder receiving stock at less than par value cannot escape liability by transferring it to an insolvent. *Wishard v. Hansen*, 99 Iowa, 307; 68 N. W. Rep. 691.]

This section is for protection of the company, and only applies where sale or transfer of stock in some way conflicts with its interests. *Moor v. Walker*, 46 Iowa, 164.

Transferee may hold stock and enforce transfer thereof in proper form in absence of any right or lien of the company to or upon such stock, provisions of by-laws to contrary notwithstanding. *Bank v. Wasson*, 48 Iowa, 336.

In absence of provisions of charter or by-laws, or special contract, a corporation has no implied lien upon shares of stockholder to secure his indebtedness to it, and his transfer of such stock is valid though not assented to by directors. *Id.*

Shares of stock of a corporation are the property of the shareholder, and he has the absolute right of sale and alienation. *Hershire v. Bank*, 35 Iowa, 272.

Written assignment and delivery of certificates coupled with authority to transfer upon company's books vests title to stock in transferee. *Court-right v. Deeds*, 37 Iowa, 503.

Transfer of stock on books of a corporation upon surrender of previous certificate is sufficient to bind corporation and third persons to such transfer without issuance of a stock certificate. *Bank v. Gifford*, 47 Iowa, 575.

Transfer not entered on books is valid as between the parties, but not as against attaching creditor, unless the latter had knowledge of the transfer. *Lumber Co. v. Bank*, 71 Iowa, 270; s. c., 32 N. W. Rep. 336.

If the books of a corporation are fraudulently kept those guilty may be held liable under section 1620, but it does not render stockholders individually liable. *Langan v. Const. Co.*, 49 Iowa, 317.

Unless so provided in charter or by-laws, a corporation cannot refuse to execute or recognize a transfer on ground that stock has not been fully paid. *Bank v. Wasson*, 48 Iowa, 336.

Transfer of stock is not valid as against levy of execution until it is regularly entered upon books of company. *Moore v. Opera House Co.*, 81 Iowa, 45; s. c., 46 N. W. Rep. 750.

A certificate of stock in a corporation is not a negotiable instrument. *Clark v. Coal Co.*, 86 Iowa, 436; s. c., 53 N. W. Rep. 291.

Who estopped, as against a pledgee, from denying validity of a transfer of stock. *Trust Co. v. Des Moines*, 97 Iowa, 668; 66 N. W. Rep. 914. Who estopped from claiming a lien as against a pledgee. *Id.*

One to whom stock is transferred, without any notice of any by-law making it liable for debts of the holder to the corporation, will be held to take free of any lien. *Des Moines v. Bank*, 97 Iowa, 204; 66 N. W. Rep. 154.

A right to inspect the stock-books gives a right of action to anyone injured by failure of corporation to comply therewith. *Boardman v. Marshalltown Grocery Co.*, Sup. Ct. Iowa, 75 N. W. Rep. 343 (1898).

A stockholder who transfers his stock is liable to the amount remaining unpaid thereon on account of any liability of the corporation existing at the time of such transfer. *White v. Green*, 105 Iowa, 176; 74 N. W. Rep. 928 (1898).

A transfer of shares is invalid as to creditors, even though they have notice, when made in any other way than as provided by this section. *Ottumwa Screen Co. v. Stodghill*, 103 Iowa, 437; 72 N. W. Rep. 669 (1897).]

## Amount paid in.

§ 1627. No certificate or shares of stock shall be issued, delivered or transferred by any corporation, officer or agent thereof, or

## Non-user; expiration; liability of stockholders, etc.—Code, §§ 1628-1631.

by the owner of such certificate or shares, without having indorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property. Any person violating the provisions of this section, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid. (New.)

[Shares which are issued as full paid, with an endorsement that the stock shall be subject to assessment for the payment of a mortgage, may be assessed. The assessment is for an unpaid balance due on the stock under Code, § 1082. Western Imp. Co. v. Des Moines Nat. Bk., 103 Iowa, 455; 72 N. W. Rep. 657 (1897).]

**Non-user.**

§ 1628. Any corporation organized under this chapter shall cease to exist by non-user of its franchise for two years at any one time, but omission to elect officers or hold meetings at any time prescribed by its articles or by-laws shall not work a forfeiture, if such election is held within two years of the time appointed therefor. (Code 1873, § 1079; Code 1888, § 1629.)

**Forfeiture of franchises. § 4313ff.****Expiration.**

§ 1629. Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs. (Code 1873, § 1080; Code 1888, § 1630.)

[Corporation will be kept alive by statute for purpose of winding up its business. R. R. Co. v. Horton, 38 Iowa, 33, 45. A voluntary dissolution does not affect its powers to act for purpose of winding up its affairs, and does not affect right of a creditor, in equity at least, to be released from inequitable consequences of such dissolution. Turn Verein v. Funck, 18 Iowa, 469.]

A corporation whose charter has expired is entitled to hold property until all of its affairs are disposed of. State v. Fogerty, 105 Iowa, 32; 74 N. W. Rep. 754 (1898).]

**Sinking fund.**

§ 1630. For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor. (Code 1873, § 1081; Code 1888, § 1631.)

**Powers of corporations. § 1609.****Liability of stockholders.**

§ 1631. Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and

execution against the company may, to that extent, be levied upon the private property of any such individual. In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and he neglects to point out any such property. In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof. (Code 1873, § 1082; Code 1888, § 1632.)

**Limit of indebtedness. § 1611. Personal liability. §§ 1609 (5), 1616. Proceedings against stockholders. § 1632.**

[Such liability should be enforced by a pro rata apportionment. Hablitzel v. Latham, 35 Iowa, 550. Officers of a corporation cannot issue stock to a creditor at less than par value with agreement that it is to be paid-up stock. Creditor so accepting stock becomes liable as holder of unpaid stock to extent that par value exceeds debt for which it is taken. Jackson v. Traer, 64 Iowa, 469; s. c., 20 N. W. Rep. 764. A creditor thus accepting stock becomes a stockholder as much as though he had subscribed for it. Subscription is only necessary to render a person a stockholder where the stock is not delivered. Id. The fact that the stock was worthless at time of its issuance and acceptance does not relieve a stockholder, accepting it, from liability. Id. But, on these points, see Clark v. Bever, 31 Fed. Rep. 670. Unless expressly authorized, officers of a corporation cannot sell stock at less than par. Oliphant v. Mining Co., 63 Iowa, 332; s. c., 19 N. W. Rep. 212. Where stock of a company has all been issued as paid-up stock, the public has the right to assume that it has been paid for in full either in money or property at a fair value. Goff v. Windmill Co., 62 Iowa, 691; s. c., 18 N. W. Rep. 307. Where the corporation, contrary to statute, but by agreement of stockholders, issues certificate of paid-up stock when only a pro rata portion has in fact been paid, this may be ground for proceeding to wind up the concern, but not for one subscriber, a party to the unlawful undertaking, to have his contract of subscription set aside and pro rata payment refunded. Where the corporation was organized for manufacture of a patented article, and all the stock was taken by defendants for their interest in the patent, which proved worthless, held that they were personally liable to creditors of corporation to extent of stock so taken by them severally, under sections 1632 and 1634. Chisholm v. Forny, 65 Iowa, 333; s. c., 21 N. W. Rep. 664. Officers of a corporation cannot release stockholder, to prejudice of creditors, from his obligation to pay his subscription unless transaction is in every respect fair. Osgood v. King, 42 Iowa, 478. Where president gave a mortgage to corporation in payment for his stock, he could not afterward surrender such stock and receive back the mortgage after insolvency of company. Burnham v. Ins. Co., 86 Iowa, 632. Liability of stockholder under National Bank Act. Hale v. Walker, 31 Iowa, 344. The corporation cannot, by any arrangement upon its part, release a subscriber from his liability. Fact that subscription was to be paid in property instead of money does not

## Contribution; sale of franchise; books, etc.—Code, §§ 1632–1635.

so release him. *Singer v. Given*, 61 Iowa, 93; s. c., 15 N. W. Rep. 858. A stockholder cannot, as against creditor, set up claims for services, or for use of property, for which corporation is indebted to him. *Id.* A railroad company may, in good faith, release a stockholder from liability, either with or without consent of creditors and other stockholders. *Gelpcke v. Blake*, 19 Iowa, 263. Execution against corporation can be levied on private property of a stockholder only after judgment has been obtained against him as provided in section 1634. *Bayliss v. Swift*, 40 Iowa, 648. See, also, *Hampson v. Wear*, 4 id. 13; *Bailey v. R. R. Co.*, 13 id. 97. In case of failure to comply with the statute in reference to organization and notice, rendering a stockholder individually liable, he becomes so primarily, and may be sued in the first instance. His relation to creditors is the same as if no attempt had been made to incorporate. *Marshall v. Harris*, 55 Iowa, 182; s. c., 7 N. W. Rep. 509.

A parol subscription to stock is valid in absence of any statute or provision in the articles of incorporation requiring such agreement to be in writing. *Sav. Bank v. Hotel Co.*, 88 Iowa, 4; s. c., 55 N. W. Rep. 67.

A subscriber to stock of a corporation is liable to garnishment for amount due on such subscription. *Supra*.

The fact of demand and refusal may be shown by the official return of the execution, which return must be regarded as conclusive, though evidence may be introduced to show that no such return was made. *Singer v. Given*, 61 Iowa, 93; s. c., 15 N. W. Rep. 858.

A stockholder knew that stock which he claims to hold as collateral security was not paid for. It does not appear that corporation assented to its being held. He and a trustee for him voted stock. Held, liable to creditors for amount unpaid on stock. *Tuthill Spring Co. v. Smith*, 90 Iowa, 331; 57 N. W. Rep. 853.

Where a defendant holds unpaid stock in an insolvent corporation, as collateral security for a loan, it is not necessary to show that he subscribed for the stock in order to make him liable under sections 1631, 1632. *Calumet Paper v. Stotts Investment Co.*, 96 Iowa, 147; 64 N. W. Rep. 782.

The individual liability of stockholders under Comp. L., S. Dak., § 2933, is enforceable in this State. *Latimer v. Citizens' State Bank*, 102 Iowa, 162; 71 N. W. Rep. 225 (1897).

Creditors of a corporation which is notoriously insolvent may enforce the individual liability of the stockholders without obtaining a judgment against the corporation. *Latimer v. Citizens' State Bank*, 102 Iowa, 162; 71 N. W. Rep. 225 (1897).

This section does not apply to an action by the corporation to recover an assessment on its shares. *Western Imp. Co. v. Des Moines Nat. Bk.*, 103 Iowa, 455; 72 N. W. Rep. 657 (1897).

Where stock is issued as full-paid for property at an excessive valuation, the stockholders are liable for the difference between the par value of the stock and a fair valuation of the property. *Stout v. Hubbell*, 104 Iowa, 199; 73 N. W. Rep. 1060 (1898).

What constitutes notice to a creditor that stock is issued as full-paid for property at a false valuation. *Stout v. Hubbell*, 104 Iowa, 199; 73 N. W. Rep. 1060 (1898).

The liability of a stockholder does not depend on the books, but on ownership of stock in fact. *White v. G. W. Marquardt & Sons*, 105 Iowa, 145; 74 N. W. Rep. 930 (1898).

A corporation which acquires stock in another corporation cannot set up ultra vires when sued as a stockholder. *White v. G. W. Marquardt & Sons*, 105 Iowa, 145; 74 N. W. Rep. 930 (1898).]

**Corporate property exhausted.**

§ 1632. Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of

which he may point out corporate property subject to levy; and, upon his satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in the preceding section, the costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion. (Code 1873, §§ 1083–1084; Code 1888, § 1634.)

See notes to preceding section.

[It is competent for a court, under above section, to render judgment against delinquent stockholder, in an action founded on a judgment against the corporation. *Singer v. Given*, 61 Iowa, 94; s. c., 15 N. W. Rep. 858. To charge a stockholder it must appear that there was a valid claim against the corporation. *Corse v. Sandford*, 14 Iowa, 235. The issue of stock to promoters for property taken at a gross valuation, held fraudulent as to creditors. *Wishard v. Hansen*, 99 Iowa, 307; 68 N. W. Rep. 691.

Evidence held to justify a finding that defendant stockholder was chargeable with notice of the fact, that the stock held by him was originally issued for less than its par value. *Id.*

The burden is on stockholder to show that he was an innocent purchaser without notice of inadequacy of the price originally paid on the issue of stock. *Id.*]

**Indemnity; contribution.**

§ 1633. When the property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution. (Code 1873, § 1085; Code 1888, § 1635.)

**Franchise sold on execution.**

§ 1634. The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement. (Code 1873, § 1086; Code 1888, § 1636.)

Dissolution. § 1617.

**Production of books.**

§ 1635. In proceedings by or against a corporation or a stockholder to charge his private property, or the dividends received by him, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation. (Code 1873, § 1087; Code 1888, § 1637.)

## Estoppel; foreign corporations — Code, §§ 1636–1639.

**Estoppel.**

§ 1636. No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. (Code 1873, § 1089; Code 1888, § 1639.)

[Person having contracted with a *de facto* corporation will not be permitted to question legal existence of such corporation as a defense to an action on such contract. Legality of incorporation will not be inquired into collaterally, but only in a direct proceeding instituted by the State for that purpose. *College v. Duke*, 14 Iowa, 14; *Same v. Tedford*, *id.*; *Mach. Co. v. Snow*, 32 *Id.* 433; *Courtright v. Deeds*, 37 *Id.* 511. So also failure of a corporation to manage and conduct its business at places required by law cannot be successfully pleaded as a defense. *Courtright v. Deeds*, 37 Iowa, 504. The execution of a mortgage to a corporation admits its corporate existence, and estops mortgagor from denying same. *Franklin v. Twogood*, 18 Iowa, 516. And where the corporation seeks to enforce a bequest in a will, its claim cannot be resisted because of defective organization. *Quinn v. Shields*, 62 Iowa, 129; s. c., 17 N. W. Rep. 437. And a corporation having entered into a contract and received benefits thereof is estopped from denying its own existence. *Humphrey v. Assn.*, 50 Iowa, 607. An action begun by a corporation cannot be defeated on ground that its officers were not legally elected. *Carothers v. Spring Co.*, 61 Iowa, 681; s. c., 17 N. W. Rep. 43. Above section does not apply, when. (*College v. Duke*, *supra*, distinguished.) *Kirkpatrick v. Church*, 63 Iowa, 373; s. c., 19 N. W. Rep. 272.

What acts would constitute "acting as a corporation" under above section? *Kirkpatrick v. Church*, 63 Iowa, 372; s. c., 19 N. W. Rep. 272. Where corporation has entered into a contract authorized by its amended articles, and received the consideration therefor, it cannot interpose defense that such amended articles had not been recorded. *Humphrey v. Assn.*, 50 Iowa, 607. The estoppel provided for by this section applies only to a body of men acting as a corporation for pecuniary profit. *Kirkpatrick v. Church*, *supra*. When objection to illegal organization can be taken only by proceeding by quo warranto. *Quinn v. Shields*, 62 Iowa, 129; s. c., 17 N. W. Rep. 437.]

**Foreign corporation; filing articles; process.**

§ 1637. Any corporation for pecuniary profit, other than for carrying on mercantile or manufacturing business, organized under the laws of another State, or of any territory of the United States, or of any foreign country, which has transacted business in the State of Iowa since the first day of September, 1886, or desires hereafter to transact business in this State, and which has not a permit to do such business, shall file with the secretary of State a certified copy of its articles of incorporation, duly attested, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this State engaged in transacting its business, and requesting the issuance to such corporation of a per-

mit to transact business in this State; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. Before such permit is issued, the said corporation shall pay to the secretary of State, the same fee required for the organization of corporations in this State, and if the capital of such corporation is increased, it shall pay the same fee as is in such event required of corporations organized under the law of this State. Any corporation transacting business in this State prior to the first day of September, 1886, shall be exempt from the payment of the fees required under the provisions of this section. The secretary of State shall thereupon issue to such corporation a permit, in such form as he may prescribe, for the transaction of the business of such corporation, and upon the receipt of such permit said corporation shall be permitted and authorized to conduct and carry on its business in this State. Nothing in this section shall be construed to prevent any foreign corporation from buying, selling and otherwise dealing in notes, bonds, mortgages and other securities. (21 Gen. Ass., ch. 76, § 1; Code 1888, § 1641.)

Section 3 of the above act, being section 1643 of the Code of 1888, was held unconstitutional in *Barrou v. Burnside*, 121 U. S. 186; 7 Sup. Ct. Rep. 931.

Non-residents prohibited from acquiring title to real estate. § 2889. Foreign corporation may bring suit in this State. § 3469. But must give security for costs. § 3847.

[For decision on enforcement by action in this State of a judgment against a foreign corporation obtained in another State, see *Green v. Equitable Mutual Life & Endowment Assn. of Waterloo*, 105 Iowa, 628; 75 N. W. Rep. 635 (1898).]

**Permit.**

§ 1638. No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise, any of the rights and privileges conferred upon corporations, until it has so complied here-with and taken out such permit. (*Id.*, § 2; Code 1888, § 1642.)

[Foreign corporation not having authority to do business in State held capable of suing in State court a non-resident upon a contract executed and to be performed in another State. *Ware Cattle Co. v. Anderson*, Sup. Ct. Iowa, 77 N. W. Rep. 1026 (1899).]

**Penalty.**

§ 1639. Any foreign corporation that shall carry on its business in violation of the provisions of this chapter in the State of Iowa, by its officers, agents or otherwise, without having complied with this statute and taken out and having a valid permit, shall forfeit and pay to the State, for each

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 Dissolution; aliens; assignments — Code, §§ 1640, 3071.
 

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and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction; and any agent, officer or employe who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or by both such fine and imprisonment, and pay all costs of prosecution. Nothing contained in this chapter shall relieve any person, company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any penalty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof, doing business in this State shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under general laws of this State, and shall have no other or greater powers. (Id., § 4; Code 1888, § 1644.)

**Dissolution; receiver.**

§ 1640. Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the State of Iowa. An action therefor may be instituted by the attorney-general in the name of the State, reserving, however, to the stockholders and creditors all rights now possessed by them. (New.)

**Ownership of property.**

§ 1641. Corporations organized in any foreign country, or corporations organized in this country, the stock of which is owned in whole or in part by aliens or non-residents, shall have the same rights, powers and privileges with regard to the purchase and ownership of real estate in this State as are granted to non-resident aliens in section twenty-eight hundred and ninety, chapter one, title fourteen, of this code. (New.)

See § 2890, post.

**Part Second. Private Law.**

**TITLE XIV. OF RIGHTS OF PROPERTY.**

**CHAPTER I.**

**Of the Rights of Aliens.**

**Non-resident aliens, acquiring and holding real estate.**

§ 2889. Non-resident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this

country one-half of the stock of which is owned or controlled by non-resident aliens, are prohibited from acquiring title to or holding any real estate in this State, except as hereinafter provided, save that the widow and heirs and devisees, being non-resident aliens, of any alien or naturalized citizen who has acquired real estate in this State, may hold the same by devise, descent or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this State, such land shall escheat to the State; provided that nothing in this act contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the State, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same. The provisions of this chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings of forfeiture have been commenced. (Code 1888, § 3073; as amended by L. 1896, April 14.)

Rights and requirements of foreign corporations. §§ 1637-1638. Rights to acquire property. § 1609 (6).

**Holders of liens.**

§ 2890. The provisions of this chapter shall not prevent the holder of any lien upon or interest in real estate, acquired before or after the date mentioned in the last section, from taking or holding a valid title to the real estate in which he has such interest, or upon which he has such lien; nor shall it prevent any non-resident alien enforcing any lien or judgment for any debt or liability which may have been created subsequently to said date, or which he may hereafter acquire, nor from becoming a purchaser at any sale by virtue of such lien, judgment or liability, if all real estate so acquired shall be sold within ten years after the title shall be perfected in such alien under such sale. And any real estate owned or held by any non-resident alien, as provided in this and the preceding sections not disposed of as therein required, shall escheat to the State.

See § 1641.

**TITLE XV. TRADE AND COMMERCE.**

**CHAPTER VII.**

**Of Assignment for Creditors.**

**Must be without preferences.**

§ 3071. No general assignment of property by an insolvent person, firm or corpora-

## Actions — Code, §§ 3469, 3497-3500.

tion, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all the creditors in proportion to the amount of their respective claims; and in every such assignment the assent of the creditors shall be presumed. (Code 1873, §§ 2115-2116; Code 1888, §§ 3292-3293.)

[An assignment with preferences cannot be attacked by one who is not a creditor of the assignor. First Nat. Bk. v. Garretson, Sup. Ct. Iowa, 77 N. W. Rep. 856 (1899).

An insolvent corporation may make a payment preferring one of its creditors over another. Id. Where a creditor accepts a conveyance of property from his debtor in good faith and in payment of a valid indebtedness, it is not rendered void by the fact that the debtor intended it as part of an assignment for the benefit of creditors. Id.]

**Part Third. Code of Civil Procedure.****TITLE XVIII. OF PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.****CHAPTER III.****Parties to an Action.****Foreign corporations.**

§ 3469. Foreign corporations may sue in the courts of this State in their corporate name. (Code 1873, § 2554; Code 1888, § 3759.)

Must give security for costs. § 3847. Attachment of stock. § 3894. Requirements of foreign corporations. §§ 1637-1638.

**CHAPTER IV.****Place of Bringing Action.****Sec. 3497. Against common carriers.**

3498. Against construction companies.  
3499. Against insurance companies.  
3500. Office or agency.

**Against common carriers.**

§ 3497. An action may be brought against any railway corporation, the owner of stages, or other line of coaches or cars, express, canal, telegraph and telephone companies, and the lessees, companies or persons operating the same, in any county through which such road or line passes, or is operated. (Code 1873, § 2582; Code 1888, § 3497.)

Right to sue and be sued. § 1609 (1).

[Railroad company has a residence in any county through which its road passes and in which it transacts business. Baldwin v. R. R. Co., 5 Iowa, 518; Richardson v. R. R. Co., 8 Id. 260. Action against foreign railway company not having any office or line of railway within the State cannot be brought in the State on a cause of action arising elsewhere by means of service on an agent found here. Canning Co. v. R. R. Co., 24 Fed. Rep. 866. Bringing cars within the State for purpose of exhibition does not authorize service upon a foreign corporation owning such cars. Carpenter v. Air Brake Co., 32 Fed. Rep. 434. Railway companies are subject to jurisdiction of our courts the same as any person resident within

the State. Mooney v. R. R. Co., 60 Iowa, 346; s. c., 14 N. W. Rep. 343. Provision as to telegraph companies is applicable to telephone companies. Franklin v. Tel. Co., 69 Iowa, 97; s. c., 28 N. W. Rep. 461.]

**Against construction companies.**

§ 3498. An action may be brought against any corporation, company or person engaged in the construction of a railway, canal, telegraph or telephone line, on any contract relating thereto or to any part thereof, or for damages in any manner growing out of the work thereon, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which the damage claimed arose. (Code 1873, § 2583; Code 1888, § 3788.)

[Venue of such actions will not be changed, when. Vaughn v. Smith, 58 Iowa, 553; s. c., 12 N. W. Rep. 604; Jordan v. Kavanaugh, 63 Iowa, 152; s. c., 18 N. W. Rep. 851.]

**Against insurance companies.**

§ 3499. Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. (21 Gen. Ass., ch. 65, § 13; Code 1873, § 2584; Code 1888, § 3789.)

[Under this section an action may be brought before a justice of the peace against an insurance company in a county other than that of its residence. Hunt v. Ins. Co., 67 Iowa, 742; s. c., 24 N. W. Rep. 745. Suit may be brought in the county where the loss occurs. Ins. Co. v. Granger, 62 Iowa, 272; s. c., 17 N. W. Rep. 504.]

**Office or agency.**

§ 3500. When a corporation, company or individual has an office or agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located. (Code 1873, § 2585; Code 1888, § 2790.)

Right of corporation to sue and be sued. § 1609 (2), note. Service of summons. §§ 3817-3818. Verification of pleadings. §§ 3580 et seq. Security for costs. § 3847ff.

[The provisions of this section are permissive, not mandatory. Dean v. White, 5 Iowa, 266. Under this section a suit growing out of or connected with the business of soliciting policies of insurance in any county may be brought in that county. Life Assn. v. Walker, 50 Iowa, 75. This section merely designates where suit shall be brought, without defining the manner in which jurisdiction over the person is to be acquired. Id. It does not limit the right to commence a suit in the county where the agency is located to the time during which the agency exists. Ockerson v. Burnham, 63 Iowa, 570; s. c., 19 N. W. Rep. 676. The office or agency is one established for the purpose of carrying on the business for which the corporation is organized. Carpenter v. Air Brake Co., 32 Fed. Rep. 434.]

## Actions — Code, §§ 3520-3534.

**CHAPTER VI.****Manner of Commencing Action.**

Sec. 3529. Service on agent of corporation.  
 3530. On agent of insurance company.  
 3531. On municipal or other corporation.  
 3532. On agent.  
 3534. By publication.

**Service on agent of corporation.**

§ 3529. If the action is against any corporation or person owning or operating any railway or canal, or any telegraph, telephone, stage, coach or car line, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company or person, wherever found, or upon any station, ticket or other agent or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county. (Code 1873, § 2611; Code 1888, § 3816.)

**On agent of insurance company.**

§ 3530. If the action is against an insurance company for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies. (New.)

**On municipal or other corporation.**

§ 3531. When the action is against a municipal corporation, service may be made on the mayor or clerk, \* \* \* and if against any other corporation, on any trustee or officer thereof, or on any agent employed in the general management of its business, or on any of the last known or acting officers of such corporation, and if no person can be found on whom service can be made as provided in this and the two preceding sections, it may be made by publication as provided in other cases. (Code 1873, § 2612; Code 1888, § 3817.)

[Jurisdiction of a foreign corporation having no agency or office in the State may be acquired by service of the proper notice. *Moffitt v. Chicago Chronicle Co.*, Sup. Ct. Iowa, 78 N. W. Rep. 45 (1899).]

**On agent.**

§ 3532. When a corporation, company, or individual, has, for the transaction of any business, an office or agency in any county other than that in which the principal resides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency. (Code 1873, § 2613; Code 1888, § 3818.)

See § 1609 (2), note.

[This section does not warrant service upon one agent, in an action growing out of the business of another and former agent, who conducted a different office in the same town, and a notice so served does not give jurisdiction over principal. *Ins. Co. v. Granger*, 62 Iowa, 272; s. c., 17 N. W. Rep. 504.

It allows service upon an agent in a suit against the principal in matters connected with the agency, but does not give jurisdiction over the principal by a notice of garnishment in a proceeding for collection of a debt from the agent in no manner connected with the agency. *Mfg. Co. v. Stewart*, 61 Iowa, 209; s. c., 16 N. W. Rep. 84.

Service on a local soliciting agent in an insurance company is sufficient. It is not necessary that he should be a general agent, have an office or transact all the company's business in the county. *Ins. Co. v. Highsmith*, 44 Iowa, 330.

Notice upon an agent whose agency has expired, but who was still acting as such for the completion of the business, was properly served upon him. *Gross v. Nichols*, 72 Iowa, 239; s. c., 33 N. W. Rep. 653.

A corporation held to have an agency in a certain county authorizing it to be sued therein by service on the agent. *Locke v. Chicago Chronicle Co.*, Sup. Ct. Iowa, 78 N. W. Rep. 49 (1899).]

**By publication.**

§ 3534. Service may be made by publication, when an affidavit is filed that personal service cannot be made on the defendant within this State, in either of the following cases:

5. In actions brought against a non-resident of this State or a foreign corporation, having in the State property or debts owing to such defendant sought to be taken by any of the provisional remedies, or to be appropriated in any way.

6. In actions which relate to or the subject of which is real or personal property in this State, when any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the State or a foreign corporation. (Code 1873, § 2618; Code 1888, § 3823.)

[Statute permitting service by publication must be strictly construed. *Hartley v. Baynton*, 5 McCrary, 453; *Smith v. Smith*, 4 G. Gr. 266; *Tunis v. Withrow*, 10 Iowa, 305; *Bardsley v. Hiens*, 33 Id. 157.]

**CHAPTER VIII.****Pleading.**

Sec. 3580. Verification; when necessary.

3581. By corporation.

3582. Actions in representative capacity.

3582. Denial; facts must be stated.

**Verification; when necessary.**

§ 3580. Every pleading must be subscribed by the party or his attorney, and when any pleading in the case shall be verified by affidavit, all subsequent pleadings, except motions and demurrers, shall be verified also; and in all cases of verification of a pleading, the affidavit shall be to the effect

Pleadings; costs; attachments, etc.—Code, §§ 3628, 3847, 3878.

that the affiant believes the statements there to be true. (Code 1873, § 2609; Code 1888, § 3875.)

#### By corporation.

§ 3581. Where a corporation is a party, the affidavit may be made by any officer or agent thereof. (Code 1873, § 2670; Code 1888, § 3876.)

#### Actions in representative capacity.

§ 3627. A plaintiff suing as a corporation, \* \* \* or in any other way implying corporate \* \* \* capacity, need not state the facts constituting such capacity or relation, but may aver the same generally, or as a legal conclusion; and where a defendant is held in such capacity or relation a plaintiff may aver such capacity or relation in the same general way. (Code 1873, § 2716; Code 1888, § 2923.)

Right to sue and be sued. § 1609 (1).

[Corporate capacity must be averred, whether corporation is plaintiff or defendant, and a failure to do so will be ground for demurrer. Sweet v. Ervin, 54 Iowa, 101; s. c., 6 N. W. Rep. 156; Byington v. R. R. Co., 11 id. 502. An action in a name which is not that of the corporation cannot be maintained. Steamboat v. Wilson, 11 Iowa, 479.]

#### Denial; facts must be stated.

§ 3628. If either of the allegations contemplated in the three preceding sections is controverted, it shall not be sufficient to do so in terms contradictory of the allegation, but the facts relied on shall be specially stated. (Code 1873, § 2717; Code 1888, § 3924.)

[A general allegation of corporate capacity is sufficient, and a bare denial will not put in issue corporate existence. Stier v. City, 41 Iowa, 353. But where a defendant sued is a corporation, answering denying that it was a corporation, or had ever been organized or attempted to be organized as such, such denial is held sufficient under this section. Folsom v. Freight Line, 54 Iowa, 490; s. c., 6 N. W. Rep. 702. In an action of a receiver a mere denial that he has properly qualified as such is not sufficient to put such fact in issue, but the facts relied on should be specifically pleaded. Goodhue v. Daniels, 54 Iowa, 19; s. c., 6 N. W. Rep. 129. A general denial does not put in issue the existence of a corporation and its capacity to sue. Blackshire v. Homestead Co., 39 Iowa, 624. In an action against a railroad company, an allegation that it was consolidated with another company before the commencement of the action need not be specifically denied. A general denial of each and every allegation of the petition is sufficient. Koons v. Ry. Co., 23 Iowa, 493. Objection that petition contains no averment of corporate existence of defendant is too late after judgment, and constitutes no ground for motion in arrest. Andre v. R. R. Co., 30 Iowa, 107.]

### CHAPTER XV.

#### Security for Costs.

##### Security for costs.

§ 3847. If a defendant, at any time before answering, shall make and file an affidavit

stating that he has a good defense in whole or in part, the plaintiff, if he is a non-resident of this State or a private or foreign corporation, before any other proceedings in the action, must file in the clerk's office a bond, with sureties to be approved by the clerk, in an amount to be fixed by the court, for the payment of all costs which may accrue in the action in the court in which it is brought or in any other to which it may be carried, either to the defendant or to the officers of the court. The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter-affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once, and none thereafter. (Code 1873, § 2927; Code 1888, § 4137.)

[These provisions apply to both domestic and foreign corporations. Ins. Co. v. Henderson, 38 Iowa, 446. But are not applicable to proceedings in justices' courts. Smith v. Humphrey, 15 Iowa, 428.]

#### Dismissal for failure to furnish.

§ 3848. An action in which a bond for costs is required by the last section, shall be dismissed if a bond is not given in such time as the court allows. (Code 1873, § 2928; Code 1888, § 4138.)

### TITLE XIX. OF ATTACHMENTS AND EXECUTIONS.

#### CHAPTER I.

##### Attachments.

##### Grounds for attachment.

§ 3878. The petition which asks an attachment must in all cases be sworn to. It must state:

1. That the defendant is a foreign corporation, or acting as such; \* \* \* (Code 1873, §§ 2951, 3021; Code 1888, § 4165.)

##### Corporation stock; how attached.

§ 3894. Stock or interest owned by the defendant in any company is attached by notifying the president or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock has been so attached. (Code 1873, § 2967; Code 1888, § 4181.)

[Shares of stock of a corporation could not be levied on at common law, and the only method now is that provided by this section. Moor v. Walker, 46 Iowa, 164. Attaching creditor acquires priority over a transfer of the stock which does not appear on the books of the company. See § 1628; Lumber Co. v. Bank, 71 Iowa, 270; s. c., 32 N. W. Rep. 336.]

Executions; actions to test corporate rights — Code, §§ 3974, 4313.

### CHAPTER III.

#### Executions.

Sec. 3974. Levy of execution on corporate stock; debts; property in hands of third person.

- 4019. Debts owing for labor preferred.
- 4020. Statement of claim; allowance.
- 4021. Contest.
- 4022. Priority.

**Levy of execution on corporation stock; debts; property in hands of third persons.**

§ 3974. Stock or interest owned by the defendant in any company or corporation, and also debts due him and property of his in the hands of third persons may be levied upon in the manner provided for attaching the same. (Code 1873, § 3050; Code 1888, § 4275.)

#### Debts owing for labor preferred.

§ 4019. When the property of any company, corporation, firm or person shall be seized upon by any process of any court, or placed in the hands of a receiver, trustee or assignee for the purpose of paying or securing the payment of the debts of such company, corporation, firm or person, the debts owing to employees for labor performed within the ninety days next preceding the seizure or transfer of such property, to an amount not exceeding one hundred dollars to each person, shall be a preferred debt and paid in full, or if there is not sufficient realized from such property to pay the same in full, then after the payment of costs, ratably out of the fund remaining, but such preference shall be junior and inferior to mechanics' liens for labor in opening and developing coal mines. (23 Gen. Ass., chs. 47, 48.)

#### Statement of claim; allowance.

§ 4020. Any employee desiring to enforce his claim for wages, at any time after seizure of the property under execution or writ of attachment and before sale thereof is ordered, shall present to the officer levying on such property or to such receiver, trustee or assignee, or to the court having custody of such property, or from which such process issued, a statement under oath, showing the amount due after allowing all just credits and set-offs, and the kind of work for which such wages are due, and when performed; and unless objection be made thereto as provided in the following section, such claim shall be allowed and paid to the person entitled thereto, after first paying all costs occasioned by the proceeding out of the proceeds of the sale of the property so seized or placed in the hands of a receiver, trustee, or assignee, or court, subject, however, to the provisions of the preceding section. (Id.)

#### Contest.

§ 4021. Any person interested may contest any claim or part thereof by filing objections thereto, supported by affidavit, with such court, receiver, trustee or assignee, and its validity shall be determined in the same way the validity of other claims are which are sought to be enforced against such property. (Id.)

#### Priority.

§ 4022. Claims of employees for labor, if not contested or if allowed after contest, shall have priority over all claims against or liens upon such property, except prior mechanics' liens for labor in opening or developing coal mines, as allowed by law. (Id.)

### TITLE XXI. OF PROCEDURE IN PARTICULAR CASES.

### CHAPTER IX.

#### Of Actions to Test Official and Corporate Rights.

Sec. 4313. For what causes.

- 4314. No joinder or counterclaim.
- 4315. When and by whom commenced.
- 4316. By private person.
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- 4318. Costs.
- 4324. Judgment of ouster against corporations.
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- 4327. Action against officers of corporation.
- 4328. Corporation dissolved.
- 4329. Bond.
- 4330. Action on.
- 4331. Duties of trustees.
- 4332. Books delivered to.
- 4333. Inventory.
- 4334. Powers.
- 4335. Penalty for refusing to obey order.

#### For what causes.

§ 4313. A civil action by ordinary proceedings may be brought in the name of the State in the following cases:

1. Against any person unlawfully holding or exercising any public office or franchise within this State, or any office in any corporation created by this State;

3. Against any person acting as a corporation within this State without being authorized by law;

4. Against any corporation doing or omitting acts, which amount to a forfeiture of its rights and privileges as a corporation, or exercising powers not conferred by law; \* \* \* (Code 1873, § 3345; Code 1888, § 4581.)

Causes of forfeiture. §§ 1622-1623. Irregular organization no defense. § 1636.

[An action may be brought upon the relation of the auditor to close the business of an insurance company for failure to comply with statutory provisions as to method of conducting business, and for the purpose of such action it will

## Actions to test corporate rights — Code, §§ 4314–4334.

be assumed that the corporation was duly organized. *State v. Aid Assn.*, 59 Iowa, 125; *s. c.* 12 N. W. Rep. 782.]

**No joinder or counterclaim.**

§ 4314. In such action there shall be no joinder of any other cause of action, nor any counterclaim. (Code 1873, § 3346; Code 1888, § 4582.)

**When and by whom commenced.**

§ 4315. Such action may be commenced by the county attorney at his discretion, and must be so commenced when directed by the governor, the general assembly, or a court of record. (Code 1873, § 1347; Code 1888, § 4583.)

**By private person.**

§ 4316. If the county attorney, on demand, neglects or refuses to commence the same, any citizen of the State having an interest in the question, may apply to the court in which the action is to be commenced, or to the judge thereof, for leave to do so, and, upon obtaining such leave, may bring and prosecute the action to final judgment. (Code 1873, § 3348; Code 1888, § 4584.)

**Petition.**

§ 4317. The petition shall contain a statement of the facts which constitute the grounds of the proceeding, and, with the notice, and all the subsequent pleadings and proceedings, shall conform to the rules given for procedure in civil actions, except so far as the same are modified by this chapter. (Code 1873, § 3349; Code 1888, § 4585.)

**Costs.**

§ 4318. When such action is brought upon the relation of a private individual, that fact shall be stated in the petition, and the order allowing him to prosecute may require that he shall be responsible for costs in case they are not adjudged against the defendant. In other cases the payment of costs shall be regulated by the same rule as in criminal actions. (Code 1873, § 3350; Code 1888, § 4586.)

**Judgment of ouster.**

§ 4324. \* \* \* If a corporation is found to have violated the law by which it holds its existence, or is acting contrary to law, or in any manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such \* \* \* franchise, or privilege, and also that he pay the costs of the proceeding. (Code 1873, § 3356; Code 1888, § 4592.)

**Pretended corporation; costs.**

§ 4326. In case judgment is rendered against a pretended but not real corpora-

tion, the cost may be collected from any person who has been acting as an officer or proprietor thereof. (Code 1873, § 3358; Code 1888, § 4594.)

**Action against officers of corporation.**

§ 4327. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby. (Code 1873, § 3359; Code 1888, § 4595.)

**Corporation dissolved.**

§ 4328. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders. (Code 1873, § 3360; Code 1888, § 4596.)

**Bond.**

§ 4329. Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trusts. (Code 1873, § 3361; Code 1888, § 4597.)

**Action on.**

§ 4330. Action may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties. (Code 1873, § 3362; Code 1888, § 4598.)

**Duty of trustees.**

§ 4331. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled. (Code 1873, § 3363; Code 1888, § 4599.)

**Books delivered to.**

§ 4332. The court shall, upon application for that purpose, order any officer of such corporation or any other person having possession of any of the effects, books, or papers thereof, in anywise necessary, for the settlement of its affairs, to deliver the same to the trustees. (Code 1783, § 3364; Code 1888, § 4600.)

**Inventory.**

§ 4333. As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court, an inventory sworn to by each of them, of all the effects, rights, and credits which come to their possession or knowledge. (Code 1873, § 3365; Code 1888, § 4601.)

**Powers.**

§ 4334. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and

Injunctions; blacklisting; pools and trusts — Code, §§ 4354, 5027, 5060.

stockholders respectively, to the extent of the effects which come into their hands. (Code 1873, § 3366; Code 1888, § 4602.)

#### **Penalty for refusing to obey order.**

§ 4335. Any person who, without good reason, refuses to obey an order of the court, as herein provided, shall be deemed guilty of contempt, and fined in any sum not exceeding five thousand dollars and imprisoned in the county jail until he complies therewith, and shall be further liable for the damages resulting to any person on account of his disobedience. (Code 1873, § 3367; Code 1888, § 4603.)

### **CHAPTER XII. Of Injunctions.**

#### **When allowed.**

§ 4354. An injunction may be obtained as an independent remedy in an action by equitable proceedings, in all cases where such relief would have been granted in equity previous to the adoption of the code; and in all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action by ordinary proceedings, he may, in the same cause, pray and have a writ of injunction, against the repetition or continuance of such breach of contract or other injury, or the commission of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right, and he may also, in the same action, include a claim for damages or other redress. (Code 1873, § 3386.)

§ 4359. An injunction to stop the general and ordinary business of a corporation, or the operations of a railway \* \* \* can only be granted upon reasonable notice of the time and place of the application to the party to be enjoined. (Code 1873, § 3391; Code 1888, § 4627.)

[Section applied. District Tp. v. Barrett, 47 Iowa, 110.]

### **TITLE XXIV.**

### **CHAPTER XI.**

#### **Offenses Against Public Policy.**

#### **Blacklisting employees.**

§ 5027. If any person, agent, company or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company or corporation, except by furnishing in writing on request a truthful statement as to the cause of his dis-

charge, such person, agent, company or corporation shall be punished by a fine not exceeding five hundred nor less than one hundred dollars, and shall be liable for all damages sustained by any such person. (22 Gen. Ass., ch. 57, § 1; Code 1888, § 5429.)

#### **Same by agents.**

§ 5028. If any railway company or other company, partnership or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in the preceding section, such company or copartnership shall be liable in treble damages to such employee so prevented from obtaining employment. (Id., § 2; Code 1888, § 5430.)

### **CHAPTER XIII.**

#### **Cheating by False Pretenses, Gross Frauds and Conspiracy.**

##### **Sec. 5060. Pools and trusts.**

- 5061. Corporation not to enter.
- 5062. Penalty.
- 5063. Contracts void.
- 5064. Defense.
- 5065. Forfeiture of charter.
- 5066. Notice by secretary of State.
- 5067. Proceedings; inquiry by grand jury.

#### **Pools and trusts.**

§ 5060. Any corporation organized under the laws of this or any other State or country for transacting or conducting any kind of business in this State, or any partnership, association or individual, creating, entering into or becoming a member of or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced or sold in this State, shall be guilty of a conspiracy. (23 Gen. Ass., ch. 28, § 1; approved May 6, 1890.)

#### **Corporation not to enter.**

§ 5061. No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, employee, director or stockholder of any corporation, shall enter into any combination, contract, or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the produc-

Pools and trusts; indictment — Code, §§ 5062–5067, 5309.

tion or sale of any article of commerce, use or coconsumption, or to prevent, restrict or diminish the manufacture or output of any such article. (Id., § 2.)

**Penalty.**

§ 5062. Any corporation, company, firm or association violating any of the provisions of the two preceding sections shall be fined not less than one per cent. of its capital or amount invested in such corporation, company, firm or association, nor more than twenty per cent. of the same; and any president, manager, director, officer, agent or receiver of any corporation, company, firm or association, or any member of any corporation, company, firm or association, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or both (Id., § 3.)

**Contracts void.**

§ 5063. All contracts or agreements in violation of any provisions of the three preceding sections shall be void. (Id., § 4.)

**Defense.**

§ 5064. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment. (Id., § 5.)

**Forfeiture of charter.**

§ 5065. Any corporation created or organized by or under the law of this State, which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise, as provided in the next section. (Id., § 6.)

**Notice by secretary of State.**

§ 5066. The secretary of state, upon satisfactory evidence that any company or association of persons incorporated under the laws of this State have entered into any trust, combination, or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice. (Id., § 7.)

**Proceedings; inquiry by grand jury.**

§ 5067. County attorneys, in their counties, and the attorney-general shall enforce

the provisions of a public nature in the seven preceding sections, and any county attorney or the attorney-general securing a conviction under the provisions thereof shall be entitled, in addition to such fee or salary as by law is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney-general and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust or combination within their respective counties. (Id., § 8.)

**TITLE XXV. OF CRIMINAL PROCEDURE.**

**CHAPTER XVII.**

**Of Process upon an Indictment.**

**Process against a corporation.**

§ 5309. The process on an indictment against a corporation shall be a notice under the seal of the court, which shall be issued by the clerk at any time after the filing of the indictment in his office, on the application of the county attorney, and shall, substantially, notify the defendant of the finding of the indictment, of the nature of the offense charged, and that it must forthwith appear and answer the same; it may be served by any peace officer in any county in the State on any officer or agent of the defendant, by reading the same to him and leaving with him a copy thereof, and shall be returned to the clerk's office without delay, with proper return of its service; and, from and after two days from the time of the making of such service, the defendant shall be considered in court, and present to all proceedings had on the indictment. (Code 1873, § 4326; Code 1888, § 5711.)

[Corporations are to be construed as persons when the circumstances in which they are placed are identical with those of natural persons expressly included in a statute. Therefore, a corporation was held liable for penalty provided for illegal sale of liquor. *Stewart v. Waterloo*, 71 Iowa, 226; s. c., 32 N. W. Rep. 275. And it appears to be well settled that a corporation may be indicted and punished for a public nuisance, such as obstruction of a highway, navigable streams, etc. Id.]

**CHAPTER XVIII.**

**Of Arraignment of the Defendant.**

**Corporation not arraigned.**

§ 5310. \* \* \* Where a corporation is defendant, arraignment shall not be required. (Code 1873, § 4327; Code 1888, § 5712.)



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KANSAS.

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# KANSAS.

## CONSTITUTION OF KANSAS - 1859.

### PROVISIONS RELATING TO CORPORATIONS.

#### Bill of Rights.

**Sec. 2.** No special privileges to be granted. This power not to be exercised by any tribunal or agency.

#### ARTICLE II.

##### Legislative.

**Sec. 17.** General laws; to be uniform in operation

#### ARTICLE XII.

##### Corporations.

**Sec. 1.** No special acts to be passed conferring corporate powers — general laws — subject to amendment by repeal.

2. Individual liability of stockholders.

4. Right of way — payment, how made or secured.

6. Term "corporation" defined — may sue and be sued.

#### Bill of Rights.

**§ 2. \* \* \*** No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

Corporations not to be created by special act.  
Art. XII, § 1.

[Above section does not inhibit legislature from granting to municipal corporations the power to permit railroad companies to construct and operate street railways therein. *Atchison v. Missouri Pac. Ry. Co.*, 31 Kan. 660; s. c., 3 Pac. Rep. 284.]

An act of the legislature authorizing counties and cities to subscribe for stock in, and issue bonds to, railroad companies was held constitutional and valid. *State ex rel. v. Nemaha Co.*, 7 Kan. 542.]

#### ARTICLE II.

##### Legislative.

**§ 17. \* \* \*** In all cases where a general law can be made applicable, no special law shall be enacted.

See art. XII, § 1.

[The fact that all persons and corporations brought within the purview of certain legislation are subject to the same duties and liabilities, under similar circumstances, disposes of the con-

stitutional objection. *Ry. Co. v. Merrill*, 40 Kan. 409; s. c., 19 Pac. Rep. 793.

An act requiring railroad companies to take bond to protect labor is not unconstitutional. *Mann v. Corrigan*, 28 Kan. 194.

Power of legislature to pass general curative laws for corporations, discussed. *Gilmore v. Norton*, 10 Kan. 505.]

#### ARTICLE XII.

##### Corporations.

Section 1. The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

See Bill of Rights, § 2; art. II, § 17.

[It cannot be shown for the purpose of avoiding an act of the legislature, that the act was passed for insufficient or improper reasons. *City v. Burleigh*, 36 Kan. 34; s. c., 12 Pac. Rep. 332.

Where a general law cannot be made applicable, the legislature may pass a special act, and this although the special act may, to some extent, affect the uniform operation throughout the State of other laws; and generally, it is a question for the legislature to determine whether a general law can be made applicable or not. *Id.*

Special grants are not to be extended by construction beyond the plain terms in which they are conferred, but should be construed strictly against the corporation, and in favor of the public. *City v. Corrigan*, 35 Kan. 21; s. c., 10 Pac. Rep. 99.

Rights or powers which have been obtained under old territorial charters are subject to amendment or repeal. *State v. Ry. Co.*, 33 Kan. 189; s. c., 5 Pac. Rep. 772.

A legislative act, general in form but special in fact, is void. *Ritchie v. Mulvane*, 39 Kan. 241; s. c., 17 Pac. Rep. 830.

And where it is so special that, though general in form, it can possibly apply to only three certain corporations, it is unconstitutional. *Topeka v. Gillett*, 32 Kan. 431; s. c., 4 Pac. Rep. 800. Article XII of the Constitution construed. *Gray v. Crockett*, 30 Kan. 138; s. c., 1 Pac. Rep. 50; *Atkinson v. Bartholow*, 4 Kan. 124.

An act of the territorial legislature, granting a franchise, is a contract between the legislature and the grantee, which the legislature can neither change, repeal or impair the obligation of. *Territory v. Reyburn*, McC. 134.]

**§ 2.** Dues from corporation shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder; and such other means as shall be provided by law; but such individual liabilities shall not

## Corporations — Const., art. 12, §§ 4, 6.

apply to railroad corporations, nor corporations for religious or charitable purposes.

Such liability, how enforced. Gen. Stat., ch. 66, § 50. Limit of liability. § 51. Contribution. § 53.

[The law in effect prohibits a bank from purchasing its own stock. *Bank v. Wulfekuhler*, 19 Kan. 65. Not only is the bank, with all its property, liable for its debts, but each stockholder is also liable for such debts to the amount of his stock. *Id.*]

Where no notice is given to the stockholder of the pendency of an action against the corporation, his liability is secondary to the corporation, and exists alone by reason of this statutory provision, and of that provision of the Constitution in pursuance of which the statute is enacted. *Howell v. Manglesdorf*, 33 Kan. 196; s. c., 5 Pac. Rep. 759.

Where a railroad company, operating a long line in the State, controls and manages another railroad for the purpose of a local line, it will be held liable for the negligence of the men operating the same. *Ry. Co. v. Davis*, 34 Kan. 199; s. c., 8 Pac. Rep. 146.

The above provision contemplates legislative action as to the means of enforcing such liability. *Tuttle v. Nat. Bank, etc. (Ill.)*, 44 N. E. Rep. 984.]

**§ 4.** No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.

[The damages recoverable under above section can never be less than the actual value of the property taken. In the statutes relating to condemnation proceedings, the word "owner" may be construed to apply to every person having any interest in the property. *Smith v. Labore*, 37 Kan. 486; s. c., 15 Pac. Rep. 577.]

Railroads are not included within the intent of the act of congress of July 26, 1866, which declares that "the right of way for the construction of highways over public lands not reserved for public uses is hereby granted." *Ry. Co. v. Johnson*, 38 Kan. 142; s. c., 16 Pac. Rep. 125.

Where a railroad company enters upon land and constructs its road, without the consent of the landowner and without making compensation for such land, the owner may pursue any of the appropriate remedies. *Ry. Co. v. Fechheimer*, 36 Kan. 45; s. c., 12 Pac. Rep. 362.

And where the railroad is being operated through such land, the owner may regard the company's act as a taking of the property under right of eminent domain, and may bring an action for the damages he has sustained by the appropriation. *Cohen v. Ry. Co.*, 34 Kan. 158; s. c., 8 Pac. Rep. 138.

The power of eminent domain is not granted to the legislature by the Constitution; it is inherent to sovereignty, and the law-making body has the fullest liberty in the exercise of its power except as restricted by the Constitution. *Ry. Co. v. Ry. Co.*, 28 Kan. 453.

The compensation for right of way appropriated to the use of corporations includes not only the value of the property taken, but also the loss the landowner sustains in the value of his property by being deprived of a portion of it. *Reisner v. Atchison*, 27 Kan. 382.

Above article of the Constitution applies to canals, railroads and other similar cases in which some corporation takes a use or benefit in the proposed way, other than that enjoyed by the public. *Pottawatomie v. O'Sullivan*, 17 Kan. 58. It is not a grant of power to appropriate private

The term "right of way" is not used as defining the quantity of estate to be appropriated, but as meaning the right of passage irrespective of the estate or title to be acquired. *Challiss v. Ry. Co.*, 16 Kan. 117.

The rule that a compensation must be first made in money, or secured by a deposit of money, before any right of way can be appropriated to the use of the corporation is imperative, and is not relaxed by the fact that the landowner has appealed from the assessment of damages by the commissioner, nor by the fact that he has recovered a judgment for the amount thereof on such appeal. *Ry. Co. v. Callender*, 18 Kan. 496.

The right of way does not pass until the compensation is secured. *Blackshire v. Ry. Co.*, 13 Kan. 514.

No man can be deprived of any right, title or interest in his lands, except as expressly provided by the provisions of the Constitution and statutory law; and he cannot be divested through such power of any greater interest in his land than the Constitution or statutes expressly provide for. *Shawnee v. Beckwith*, 10 Kan. 603.

An owner whose land has not been condemned may sue the railroad company for trespass. *Ry. Co. v. Weaver*, 10 Kan. 344.

The statutes of Kansas authorizing real estate to be appropriated to the use of a railroad company for right of way, so far as they apply to this case, do not contravene the provisions of the above section of the Constitution. *Hunt v. Smith*, 9 Kan. 137.

On a trial of an appeal from the assessment of the value of land taken by a railroad company, evidence showing value of the land immediately before and after the location of the road is properly admitted, but evidence of benefit to the land should be excluded. *Ry. Co. v. Owen*, 8 Kan. 409.

The railroad company must pay for the right of way, irrespective of any benefit from the proposed improvement of the company. *Ry. Co. v. Orr*, 8 Kan. 419.

Could even special benefits received by the plaintiff, by reason of the construction of said railroad track, be set off against the plaintiff's damages? *Ry. Co. v. Andrews*, 30 Kan. 597; s. c., 2 Pac. Rep. 667.

Under the provisions of above section, a railroad company must make full compensation for the right of way appropriated to the corporation, irrespective of any benefits or any improvements to the property from the construction of the road. *Ry. Co. v. Ross*, 40 Kan. 598; s. c., 20 Pac. Rep. 197.

Where a railroad grade has been constructed and is afterward abandoned, it becomes the property of the owner of the land through which it was constructed, and if another railroad appropriates the same it should pay to the owner the value of the land as enhanced by such grade. *Cohen v. Ry. Co.*, 34 Kan. 158; s. c., 8 Pac. Rep. 138.

If a railroad company takes possession of a strip of land, with consent of a person in possession of it, claiming title thereto, and who has color of title, in an action by the paramount owner for such taking, the railroad company will not be considered a mere trespasser, but will be required to pay only the value of the land at the time it was taken, and the damages to the land not taken. *Id.*

**§ 6.** The term corporations, as used in this article, shall include all associations and joint-stock companies having powers and privileges not possessed by individuals or partnerships; and all corporations may sue and be sued in their corporate name.

Corporations defined. Gen. Stat., ch. 66, §§ 1-2. "Person" includes. Gen. Stat., ch. 1, § 8. May sue and be sued. Gen. Stat., ch. 66, § 13.

Classification; how created — Ch. 66, §§ 1-3.

## GENERAL STATUTES—1897.

Compiled by W. C. WEBB.

### CHAPTER I.

#### Laws Governing the State.

§ 8, subd. 13. The word "person" may be extended to bodies politic and corporate.

### CHAPTER II.

#### Of the Secretary of State.

§ 24. The secretary of State shall have the custody of ..... all charters of private corporations ..... (L. 1879, ch. 166, § 30.)

### CHAPTER LXVI.

#### Of Private Corporations.

- Sec. 1. Corporations classified.
- 2. Private corporations.
- 3. How created.
- 3a. Charter board created.
- 3b. Application for permission to organize or do business in State.
- 3c. Application fee; designation of secretary of State for service of process on corporation.
- 3d. Actions against foreign corporation, where brought.
- 3e. Meeting of charter board; when application is to be granted.
- 3f. Charter fee.
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- 51. Liability of stockholders generally.
- 52. Officer in charge of books to furnish names of stockholders.
- 53. Contribution by stockholders.
- 54. Co-operative societies.
- 99. Id.
- 100. Id.
- 104. Preferred stock.

#### Corporations classified.

Section 1. Corporations are either: First, public; or, second, private. A public corporation is one that has for its object the government of a portion of the State. (Gen. Stat. 1868, ch. 23, §§ 1, 2.)

See Const., art. XII, § 6.

#### Private corporations.

§ 2. Private corporations are of three kinds: First, Corporations for religion. Second, Corporations for charity or benevolence; and, Third, Corporations for profit. (Id., § 3.)

"Person" includes. Gen. Stat., ch. 1, § 8.

#### How created.

§ 3. Private corporations may be created by the voluntary association of five or more persons for the purposes and in the manner mentioned in the following sections of this article and amendments thereto. Every member or stockholder in said corporation shall vote in person or by proxy. (L. 1872, ch. 105, § 1)

Must be created by general laws. Const., art. XII, § 1; art. II, § 17. Bill of Rights, § 2. "Corporation" defined. Const., art. XII, § 6; Gen. Stat., ch. 66, §§ 1-2. Dissolution. Gen. Stat., ch. 66, § 45ff. Method of voting. Gen. Stat., ch. 66, § 27. See § 3a, post.

[A stockholder will not be relieved from liability on his subscription to stock by reason of irregularities in the election of officers or in the adoption of by-laws nor by the fact that a com-

## Charter board; organization; foreign corporations — L. 1898, ch. 10.

poration created to "build and maintain a flouring mill" is expending its money to build a dam. *Ginrich v. Mill Co.*, 21 Kan. 61.

One who has frequently dealt with a supposed corporation, which has attempted in good faith to incorporate, and there has been an actual, open and notorious exercise of corporate powers for a series of years, unchallenged by the State, will not be permitted, when sued upon a note purchased and held by such corporation, and which as a corporation it might rightfully purchase and hold, to defeat the action by showing a technical omission in the proceedings for organization. The corporation is as to him one de facto; and whether it be one also *de jure* is a question not open for inquiry collaterally, but only by a direct proceeding instituted by the State. *Pape v. Bank*, 20 Kan. 440; see *Douglas Co. v. Bolles*, 94 U. S. 104.

A corporation for jurisdictional purposes is to be treated as a citizen of the State by whose laws it was created, even though it has no business office in, and none of its officers are in such State. *Pac. R. R. Co. v. M. P. Ry. Co.*, 5 McC. 373.

A corporation created by a territorial legislature becomes, after the admission of the territory as a State, a corporation of the State. *K. P. Ry. Co. v. Atchison, etc., R. R. Co.*, 112 U. S. 414; s. c., 5 Sup. Ct. Rep. 314.

An association of persons cannot have even a de facto corporate existence under the general law, without a bona fide intent to comply with such law. *McLennan v. Hopkins*, 2 Kan. App. 260; 41 Pac. Rep. 1061.]

**Charter board created.**

§ 3a. There is hereby created a charter board, to be composed of the attorney-general, the secretary of State, and the State bank commissioner. The attorney-general shall be the president and the secretary of State the secretary of said board. (L. 1898, ch. 10, approved January 7, 1899.)

[The above act, consisting of eighteen sections, created a charter board to approve of the formation or admission of corporations. Sections 1-9, and 16, are included here. Sections 10-15 amended various sections of the general statutes of 1868 and are inserted in their proper places. Sections 17 and 18 were merely formal.]

**Application for permission to organize or do business in State.**

§ 3b. Persons seeking to form a private corporation under any of the laws of this State, or any corporation organized under the laws of any other State, territory, or foreign country, and seeking to do business in this State, shall make application to said board, upon blanks supplied by the secretary of State, for permission to organize a corporation, or to engage in business as a foreign corporation in this State. Such application shall set forth —

If a corporation to be organized under the laws of this State: First, The name desired for such corporation. Second, The place where its principal office or place of business is to be located. Third, The length of time for which said corporation is to exist. Fourth, The full nature and character of the business in which it proposes to engage. Fifth, The names and addresses of the proposed incorporators. Sixth, The proposed amount of the capital stock.

If a corporation organized under the laws

of another State, territory or foreign country and seeking to do business in this State: First, A certified copy of its charter or articles of incorporation. Second, The place where its principal office or place of business is to be located. Third, The full nature and character of the business in which it proposes to engage. Fourth, The names and addresses of the officers, trustees or directors and stockholders of the corporation. Fifth, A detailed statement of the assets and liabilities of said corporation, and such other information as the board may require in order to determine the solvency of the corporation. Such statement shall be subscribed and sworn to by the president and secretary or by the managing officer of said corporation. (Id., § 2.)

**Application fee; designation of secretary of State for service of process on corporation.**

§ 3c. Each application for permission to organize a corporation, or to engage in business in this State as a foreign corporation, shall be accompanied by a fee of twenty-five dollars, to be known as an application fee; and in all cases where such applications are made by corporations organized under the laws of any other State, territory, or foreign country, and as a condition precedent to obtaining authority to transact business in this State, said corporation shall file in the office of the secretary of State its written consent, irrevocable, that actions may be commenced against such corporation in the proper court of any county in this State in which the cause of action arose, or in which the plaintiff may reside, by the service of process on the secretary of State, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or chief officer of such corporation, and shall be executed by the president and secretary of the company, authenticated by the seal of the corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the said secretary and president to execute the same. Every foreign corporation now doing business in this State shall, within thirty days from the taking effect of this act, file with the secretary of State its written consent as above specified. (Id., § 3.)

**Actions against foreign corporation, where brought.**

§ 3d. Actions against any corporation organized under the laws of any other State, territory or foreign country and doing business in this State may be brought in any county where the cause of action arose or in which the plaintiff may reside. The summons shall be directed to the secretary of State, and shall require the defendant to

## Charter board; fees on organization; increase of stock — L. 1898, ch. 10.

nswer by a certain day, not less than forty days nor more than sixty days from its ate. Said summons shall be forthwith forwarded by the clerk of the court to the secretary of State, who shall immediately forward a copy thereof to the secretary of the corporation sued; and thereupon said secretary of State shall make return of said summons to the court whence it issued, showing the date of its receipt by him, the ate of forwarding such copy, the name and address of the person to whom he forwarded said copy, and the costs for service and return thereof. Such return shall be under is hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process irected to him. Said secretary of State shall keep a suitable record book, in which e shall docket every action commenced against a corporation, the time when commenced, the date and manner of service; also, the date of the judgment, its amount ad costs, and the date of payment thereof, which shall be certified from time to time y the clerk of the court. There shall be fixed as costs a fee of two and one-half dollars for each case so docketed, which e shall be collected as other costs in the use, and forwarded by the clerk of the court to the State treasurer, who shall execute his receipt therefor in duplicate, one to e mailed to the clerk of the court and the ther to be filed with the secretary of State. d., § 4.)

See ch. 95, § 66, post.

**Meeting of charter board; when application to be granted.**

§ 3e. The charter board shall hold at least one meeting each month, in the office of the cretary of State, and at such other times ; may be deemed necessary, subject to call y the secretary. The board shall make a careful investigation of each application and shall inquire especially with reference to the character of the business in which the proposed corporation is to engage, and if the board shall determine that the business or undertaking is one for which a corporation ay lawfully be formed, and that the applicants are acting in good faith, the application shall be granted, and the secretary of the board shall issue a certificate setting forth the fact that the persons named in the application have been authorized by the charter board to form a private corporation set forth in the application, reciting the proposed name and character thereof. In ssing upon the application of a foreign rporation, the board shall also make spe cial inquiry with reference to the solvency such corporation, and for this purpose ay require such information and evidence they may deem proper. If they shall determine that such corporation is properly ganized in accordance with the laws of e State, territory or foreign country under

which it is incorporated, that its capital is unimpaired, and that it is organized for a purpose for which a domestic corporation may be organized in this State, the application shall be granted, and the secretary of the board shall issue a certificate setting forth the fact that the application has been granted, and that such foreign corporation may engage in business in this State as hereinafter provided. (Id., § 5.)

**Charter fee.**

§ 3f. Each corporation which has received authority from the charter board to organize shall, before filing its charter with the secretary of State as provided by law, pay to the State treasurer of Kansas, for the benefit of the permanent school fund, a charter fee of one-tenth of one per cent. of its authorized capital, upon the first one hundred thousand dollars of its capital stock, and upon the next four hundred thousand dollars or any part thereof one-twentieth of one per cent., and for each million or major part thereof one hundred dollars. The treasurer shall execute his receipt therefor in triplicate, one of which receipts shall be delivered to the party making the payment, one to the auditor of State, and the other shall be indorsed upon the charter; and it shall be unlawful for the secretary of State to file or accept for filing any charter, or to issue a certified copy of any charter, of any corporation required by the provisions of this act to pay a charter fee, which does not have such receipt for the proper fee indorsed thereon by the State treasurer. In addition to the charter fee herein provided, the secretary of State shall collect a fee of two dollars and fifty cents for filing and recording each charter containing not to exceed ten folios, and an additional fee of twenty-five cents for each folio in excess of ten contained in any charter. The fee for filing and recording a charter shall also entitle the corporation to a, certified copy of its charter. All the provisions of this act, including the payment of the fees herein provided, shall apply to foreign corporations seeking to do business in this State, except that in lieu of their charter they shall file with the secretary of State a certified copy of their charter, executed by the proper officer of the State, territory or foreign country under whose laws they are incorporated; and any corporation applying for a renewal of its charter shall comply with all the provisions of this act in like manner and to the same extent as is herein provided for the chartering and organizing of new corporations. (Id., § 6.)

**Fee on increase of stock.**

§ 3g. When any corporation doing busi ness in this State shall hereafter increase its authorized capital stock it shall pay to the State treasurer, as herein provided, for the benefit of the permanent school fund,

## Purposes of formation — Ch. 66, § 4.

the fee of one-tenth of one per cent. of the amount of such increase, and shall pay to the secretary of State, for filing and recording the amendment or certificate authorizing such increase, the same fees as provided in section 5 of this act for filing and recording charters; and the secretary of State shall not file, record or certify to such increase of its authorized capital until all the provisions of this act have been fully complied with. (Id., § 7.)

[Increase of stock. Ch. 66, § 16.]

#### Fee on consolidation.

§ 3h. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay to the State treasurer the charter fee herein provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations upon which such fee has once been paid. (Id., § 8.)

#### Foreign corporations.

§ 3i. Any corporation organized under the laws of another State, territory or foreign country and authorized to do business in this State shall be subject to the same provisions, judicial control, restrictions, and penalties, except as herein provided, as corporations organized under the laws of this State. (Id., § 9.)

#### Certain corporations not subject to act of 1898.

§ 3j. Nothing in this act shall be construed to apply to religious, educational, charitable, fraternal, benevolent or beneficiary societies, or other associations or lodges, not original\* for pecuniary profit, except that they may incorporate under the provisions of this act by submitting their application to the charter board, and paying the fee for filing and recording. (Id., § 16.)

#### Corporations; for what purposes formed.

§ 4. The purposes for which private corporations are formed are the following:

1st. The support of public worship.

2d. The support of benevolent, charitable, educational or missionary undertaking.

3d. The support of any literary or scientific undertaking, the maintenance of a library, or the promoting of painting, music, or other fine arts.

4th. The transaction of a printing or publishing business.

5th. The maintenance of a club for social enjoyment.

6th. The maintenance of public parks, and of facilities for skating and other innocent sports.

7th. The purchase, location and laying out of town sites, and the sale and conveyance

of the same lots and subdivisions, or otherwise.

8th. The promotion of immigration.

9th. The establishment and maintenance of a hotel.

10th. The maintenance of a public or private cemetery.

11th. The erection and maintenance of market-houses and market-places.

12th. The construction and maintenance of sewers.

13th. The organization and maintenance of boards of trade and business exchanges, with power to hold and improve real estate, and to transact any and all business connected therewith.

14th. The accumulation and loan of funds, the erection of buildings, and the purchase and sale of real estate for the benefit of its members.

15th. The organization of loan and trust companies; provided, that nothing in this act shall be construed to authorize such loan and trust companies to sell real estate held as security, except in the manner provided by law.

16th. The supply of water to the public.

17th. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.

18th. The construction and maintenance of dams and canals for the purpose of waterworks, irrigation or manufacturing purposes.

19th. The construction and maintenance of a railway and a telegraph line in connection therewith.

20th. Corporations may be formed for the purpose of selling, hiring or leasing engines, cars, rolling-stock, and other equipments for railroads to railroad companies.

21st. The construction and maintenance of any species of road and of bridges in connection therewith.

22d. The construction and maintenance of a bridge.

23d. The construction and maintenance of a telegraph line.

24th. The construction and maintenance of a telephone line. All such corporations shall have all the rights and powers conferred, and be subject to all the liabilities and duties imposed by the general laws of this State upon telegraph corporations.

25th. The construction and maintenance of a street railway.

26th. The establishment and maintenance of a line of stages.

27th. The establishment and maintenance of a ferry.

28th. The building and navigation of steamboats, and the carriage of persons and property thereon.

29th. The transportation of goods, wares, merchandise or any valuable thing.

30th. The insurance of human life, and dealing in annuities.

31st. The insurance of human beings

## Charters; name; amendment — Ch. 66, §§ 5-9.

32d. The insurance of property against marine risks.

33d. The insurance of property against loss or injury by fire, or by any risk of inland transportation.

34th. The insurance of the lives of domestic animals, or against their loss by other means.

35th. The prevention or punishment of theft or wilful injuries to property, and insurance against such risks.

36th. The transaction of any manufacturing, mining, mechanical, chemical, or mercantile, and agricultural implements and produce business, either separately or all combined.

37th. The encouragement of agriculture and horticulture.

38th. The conversion and disposal of agricultural products by means of mills, elevators, markets and stores, or otherwise.

39th. The improvement of the breed of domestic animals by importation sale or otherwise.

40th. The construction, maintenance and operation of union stockyards, and the erection of such buildings, hotels, railways and switches as may be necessary for that purpose.

41st. Corporations may be formed and organized for the construction and maintenance of warehouses, elevators, and granaries.

42d. The making of any stream or river in the State of Kansas navigable, by slack-water navigation, for boats for the carriage of freight and passengers.

43d. To raise necessary funds by any settlers on any Indian lands in this State, to defray expenses in endeavoring to obtain title to any such lands so occupied by such settlers.

[This section is derived from section 5 of chapter 23 of the General Statutes of 1868. This section contained thirty-six clauses. These were increased from time to time by amendment and supplemental legislation. Clause 15 is derived from L. 1873, ch. 70; clause 20 from L. 1876, ch. 59; clause 24 from L. 1885, ch. 104; clause 36 from L. 1874, ch. 53; clause 39 from L. 1873, ch. 70; clause 40 from L. 1871, ch. 65; clause 41 from L. 1872, ch. 206; clause 42 from L. 1875, ch. 75; clause 43 from L. 1873, ch. 70.]

## What charter must contain.

§ 5. A charter must be prepared, setting forth: 1st, The name of the corporation. 2d, The purposes for which it is formed. 3d, The place or places where its business is to be transacted. 4th, The term for which it is to exist. 5th, The number of its directors or trustees and the names and residences of those who are appointed for the first year. 6th, The amount of its capital stock, if any, and the number of shares into which it is divided. 7th, The names and addresses of the stockholders, and the number of shares held by each. (Gen. Stat. 1868, ch. 23, § 6, as amended by L. 1898, ch. 10; approved January 7, 1899.)

See ch. 66, § 6. General office must be within the State. Ch. 66, §§ 42-43. General corporate power. Ch. 66, § 13.

[Where corporators in preparing certificate employ only the words used in the statute to describe the general purposes of such incorporation, it will be presumed that they intended to create a corporation of the same general nature and powers granted by the statute, rather than that by such words they sought to apply special limitations on the powers of the corporation. Whetstone v. University, 13 Kan. 320.

It is not a pre-requisite to the transaction of business by a corporation that all the capital stock be subscribed. Corporate existence dates from time of filing charter. R. R. Co. v. Stafford Co., 38 Kan. 121; s. c., 12 Pac. Rep. 593.

The placing of a void provision in the by-laws of a corporation does not necessarily invalidate the organization. Aultman v. Waddle, 40 Kan. 201; s. c., 19 Pac. Rep. 730.

Directors have no power to change the number or par value of shares as set forth in the charter. Tschumi et al. v. Hills, 6 Kan. App. 549; 51 Pac. Rep. 619 (1897).]

## Charter of road company.

§ 6. The charter of a road company must also state: First, The kind of road intended to be constructed. Second, The places from and to which the road is intended to be run. Third, The counties through which it is intended to be run. Fourth, The estimated length of the road. (Id., § 7, in part.)

[Above section does not apply to a street railway company, incorporated for the purpose of constructing and operating a horse-car railway in the streets of a single city. Atchison, etc., Co. v. Ry. Co., 31 Kan. 660; s. c., 3 Pac. Rep. 284.

In the certificate of incorporation of a bridge company, what is a sufficient description of location of the bridge. Hunt v. Bridge Co., 11 Kan. 412.]

## Charter of bridge or ferry company.

§ 7. The charter of a bridge or ferry company [in addition to the requirements of the next preceding section] shall also state the stream intended to be crossed, and the place where it is intended to be crossed by the bridge or ferry. (Id., § 7, in part.)

## Corporate name.

§ 8. The corporate name of every corporation hereafter organized, (except banks and corporations not for pecuniary profit,) shall commence with the word "the" and end with the word "corporation," "company," "association," or "society," and shall indicate by its corporate name the business to be carried on by said corporation. (L. 1886, ch. 62, § 1, in part.)

Name, how changed. Ch. 66, §§ 14-15. Misnomer not fatal. Ch. 66, § 37.

## Amendment of charter.

§ 9. Any corporation organized or existing under the provisions of this act may within the limits of this act amend its charter in any of the parts thereof; but in any such case such charter shall be so amended only when authorized by a two-thirds vote of the stockholders of such corporation at a

## Filing; existence; general powers — Ch. 66, §§ 10-13.

meeting held in conformity with the by-laws thereof; and as so amended such charter shall be subscribed by the directors or trustees thereof, and acknowledged by not less than three thereof, who shall be citizens of this State, before an officer duly authorized to take acknowledgments of deeds, and thereupon filed and recorded in the same manner and with like effect as now provided in cases of original charters under provisions of this act. (Id., § 1.)

**Charter to be subscribed and acknowledged.**

§ 10. The charter of an intended corporation must be subscribed by five or more persons, three of whom, at least, must be citizens of this State, and must be acknowledged by them before an officer duly authorized to take acknowledgments of deeds. (Gen. Stat. 1868, ch. 23, § 8.)

[See *Sword v. Wickersham*, 29 Kan. 746.]

**Filing charter.**

§ 11. Such charter shall, after the payment of the charter fee to the State treasurer, and having his receipt indorsed thereon as provided by law be filed in the office of the secretary of State, who shall record the same at length in a book to be kept for that purpose and retain the original on file in his office. A copy of the charter or the record thereof, duly certified by the secretary of State, under the seal of his office, shall be evidence of the creation of the corporation. (Gen. Stat. 1868, ch. 23, § 9, amended by L. 1898, ch. 10; approved January 7, 1899.)

**Charter fee.** § 31.

[Above section applied. *Mining Co. v. Adams*, 35 Kan. 193; s. c., 10 Pac. Rep. 468.]

**Corporate existence, when begins.**

§ 12. The existence of the corporation shall date from the time of filing the charter, and the certificate of the secretary of State shall be evidence of the time of such filing. (Id., § 10.)

**Dental of corporate existence.** Ch. 103, § 143.

[A corporation is created when certificate is filed with secretary of State. *Hunt v. Bridge Co.*, 11 Kan. 412; R. R. Co. v. Stafford Co., 36 id. 121; s. c., 12 Pac. Rep. 593.

While corporate existence dates from time of filing charter, it cannot be regarded as a complete organization authorized to transact business when subscription books have not yet been opened, and no stock has been subscribed; nor can it be until a full and complete organization has been effected in accordance with the requirements of the statutes. *Coal Co. v. Settle*, 54 Kan. 424; s. c., 38 Pac. Rep. 483; *Walton v. Oliver*, 49 Kan. 107; s. c., 30 Pac. Rep. 172.]

**General powers.**

§ 13. Every corporation, as such, has power:

First. To have succession by its corporate name, for the period limited in its charter,

and when no period is limited, for twenty years.

Corporate name. § 8. Must be stated in certificate. § 5. Change of. §§ 14-15. Duration extended. § 38. Dissolution. § 45ff.

Second. To maintain and defend judicial proceedings.

Corporation may sue and be sued. Const., art. XII, § 6. May sue its members. § 35. Stockholders liable, when. §§ 50, 51. Venue of actions against corporations. Ch. 95, §§ 45-48. Service of summons upon. Ch. 95, §§ 65-73. Same, in justice's court. Ch. 103, § 34. Verification of pleadings. Ch. 95, § 110. Attachment. Ch. 95, § 190. Proceedings for forfeiture. Ch. 96, § 97ff. Denial of corporate existence. Ch. 103, § 143. How proved. Ch. 102, § 222.

[Where one railroad company is consolidated with others under a new name, it ceases to exist as a corporation, and an action brought by or against it cannot afterward be prosecuted by or against it or in its original name. *Ry. Co. v. Smith*, 40 Kan. 192; s. c., 19 Pac. Rep. 636.

Parol evidence is admissible to show that a resolution of the board of directors of a railroad company, entered upon the record of its proceedings, did not correctly recite the amount of money found due and ordered to be paid to one of its officers. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544.

When part payment of an officer's salary is an acknowledgment of liability for remainder. Id.

Liability of corporation for unauthorized purchases by its officers. *Getty v. Milling Co.*, 40 Kan. 281; s. c., 19 Pac. Rep. 617. For services of an attorney employed by general manager or president. *R. R. Co. v. Grove*, 39 Kan. 731; s. c., 18 Pac. Rep. 958; St. L. etc., Ry. Co. v. Kirkpatrick, 52 Kan. 104; s. c., 34 Pac. Rep. 400; *Bank v. Berry*, 53 Kan. 696; s. c., 37 Pac. Rep. 131. For note executed by corporate officers. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544; *Massey v. C. B. & S. Assn.*, 22 Kan. 624.

A corporation may be guilty of fraud. *Lewis v. Meier*, 14 Fed. Rep. 311.

The existence of a corporation de facto cannot be called in question collaterally. *Pape v. Bank*, 20 Kan. 440; *Douglas Co. v. Bolles*, 94 U. S. 104. But an association of persons cannot have even a de facto corporate existence under the general law, without a bona fide intent to comply with such law. *McLellan v. Hopkins*, 41 Pac. Rep. 1081.

Where a liability is incurred before the organization of a corporation is completed, the persons assuming to act as directors are personally liable. *Walton v. Oliver*, 49 Kan. 107; s. c., 30 Pac. Rep. 172.

Before a stockholder can maintain an action in his own name to redress wrongs committed against the corporation, it must appear that he has in good faith, but without success, attempted to secure action by the directors or managing officers of the corporation, or that demand for their action would be unavailing. *R. R. Co. v. Sumner Co.*, 51 Kan. 617; s. c., 33 Pac. Rep. 312.

Assumption by corporation of liabilities of its promoters. *Davis v. Butler Co.*, 52 Kan. 693; s. c., 35 Pac. Rep. 776.

Liability of the promoters, as persons, to one dealing with them before legal organization. *McLellan v. Hopkins*, 41 Pac. Rep. 1061.

Promoters are liable for materials furnished by one elected by them as superintendent, where the organization of the corporation is defective. *Potstone v. Mfg. Co.*, 41 Pac. Rep. 211.

When a new corporation answerable for liabilities of constituent companies. *Berry v. R. R. Co.*, 52 Kan. 774; s. c., 36 Pac. Rep. 724.

Corporation liable in tort for personal injury to

## General powers — Ch. 66, § 13.

employe. Morbach v. Mining Co., 53 Kan. 731; s. c., 37 Pac. Rep. 122.

The interest of a stockholder is of a collateral nature, and not that of an owner, and he may sue the corporation for a personal injury. *Id.*

Gas company has no standing in court to test the right of a rival company to use the streets for the same purpose, or the validity of ordinance granting the right. *Mining & Gas Co. v. Gas & Mining Co.*, 55 Kan. 173; s. c., 40 Pac. Rep. 326.

A corporation is liable to an action for malicious prosecution commenced by an agent, only when the agent acted within the scope of his authority. *Atchison, etc., Co. v. Brown*, 57 Kan. 785; 48 Pac. Rep. 31.

A corporation formed by consolidation, which voluntarily adopted a petition in error of one of the constituent companies, held to have consented to be substituted as a party in a court below in a new trial. *W. W. Ry. Co. v. Quinn*, 57 Kan. 737; 48 Pac. Rep. 132.

Where a defendant corporation was consolidated with another company pending an action, held, that the consolidated corporation waived the lack of revivor and substitution. *Curry v. Kansas City Ry. Co.*, 58 Kan. 6; 48 Pac. Rep. 579.

Corporate records and minutes are not competent evidence between strangers. *Dolan v. Wilkerson*, 57 Kan. 758; 48 Pac. Rep. 23.

The stockholders are entitled to maintain or defend actions for the corporation, without showing that the directors are willfully or fraudulently neglectful of its interests. *Home Mining Co. v. McKibben*, Sup. Ct. Kan., 56 Pac. Rep. 756 (1899).]

Third. To make and use a common seal, and alter the same at pleasure.

Seal requisite to corporate deeds. § 33. Corporate records under seal, evidence. § 36.

[A court of equity will not declare a contract between two corporations void because the corporate seals are not affixed to it (it being otherwise valid), but if necessary will rather compel the parties to affix their seals. *R. R. Co. v. Miami Co.*, 12 Kan. 483.]

Fourth. To hold, purchase, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal or mixed, as shall be requisite for such corporation to acquire, in order to obtain or secure the payment of any indebtedness or liability due to or belonging to the corporation.

Power to convey. Ch. 117, § 31; ch. 66, § 33.

[Where a corporation is authorized by its charter to loan money, it has an implied power to take mortgage security therefor, where the debt is bona fide, and created in the regular course of business. *Massey v. C. B. & S. Assn.*, 22 Kan. 624.]

Authority of corporate officers to execute a note. *R. R. Co. v. Tierman*, 37 Kan. 606.]

Fifth. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

Principal officers, election of. § 25.

[Parties employed by the president of a corporation appearing as an active agent in the execution of any work, have a right to assume that such officer is acting for the corporation, and that his acts in that respect are its acts and binding upon it. *R. R. Co. v. Jones*, 30 Kan. 601; s. c., 2 Pac. Rep. 657.]

Implied authority of agent of a foreign corporation. *St. John v. Cornwell*, 52 Kan. 712; s. c., 35 Pac. Rep. 785.]

Sixth. To make by-laws, not inconsistent with existing laws, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

See § 26. May increase its stock. § 16. And issue preferred stock. § 104. Transfer of stock. § 22.

[The placing of a void provision in the by-laws of a corporation does not necessarily invalidate the organization. *Aultman v. Waddle*, 40 Kan. 201; s. c., 19 Pac. Rep. 730.]

Seventh. To enter into any obligation or contract essential to the transaction of its ordinary affairs.

See §§ 31, 23. May borrow money. § 18. Business conducted by directors. § 24.

[A corporation authorized to loan money has implied power to take mortgage security therefor. *Massey v. Assn.*, 22 Kan. 624.

So long as it does not depart from terms of its charter, a corporation is clothed everywhere with the powers given it by its said charter, and has capacity to carry on its business and extend its operations in other States and countries. *R. R. Co. v. Fletcher*, 35 Kan. 236; s. c., 10 Pac. Rep. 596.

An act within the powers of a corporation, when regularly done, binds both the corporation and the stockholders. *Whetstone v. University*, 13 Kan. 320.

A Pennsylvania corporation which could not have an office or do business in that State cannot do business in Kansas. *Land, etc., Co. v. Coffey Co.*, 6 Kan. 245.

Additional powers, auxiliary to the original purpose of a corporation, may be conferred thereon by the legislature. *R. R. Co. v. Fletcher*, supra.

What is essential to constitute a person a promoter of a corporation. *R. R. Co. v. Tierman*, 37 Kan. 606; s. c., 15 Pac. Rep. 544.

A corporation may ratify by its acts the terms of a contract by which it would not, without such ratification, be bound. *W. U. Tel. Co. v. Ry. Co.*, 1 McC. 565.

Where a corporation goes outside of the scope of its legitimate business to make a contract, and that contract has been executed, and the corporation has received the benefits thereof, it will be enforced. *Holt v. Bank*, 25 Fed. Rep. 812.

A corporation which has enjoyed the benefits of a contract cannot plead that it was ultra vires, where no fraud is intended or has been committed. *Sherman C. T. Co. v. Morris*, 43 Kan. 282; s. c., 23 Pac. Rep. 569; *Town Co. v. Fletcher*, 46 Kan. 524; s. c., 26 Pac. Rep. 951.

Where a corporation has received benefits from others, upon contracts ultra vires or void because of some irregularity or want of power in their creation, but not void because made in violation of express law, or public policy, or good morals, and retains such benefits, it must pay for them. *Hamilton Co. v. Webb*, 47 Kan. 106; s. c., 27 Pac. Rep. 997.

Those who deny the authority of the president and secretary of a corporation to execute a contract on its behalf, regular on its face, take upon themselves the burden of establishing their claim. *Sherman T. Co. v. Swigart*, 43 Kan. 292; s. c., 23 Pac. Rep. 569.

A corporation may enforce a contract made by another corporation, although the corporation has common directors. A contract between such corporations is not invalid. *Salina Nat. Bk. v. Prescott*, Sup. Ct. Kan., 57 Pac. Rep. 121 (1899).

A corporation cannot set up ultra vires when it has received the benefit of a transaction. *Opera House v. Mercantile Assn.*, 59 Kan. 778; 53 Pac. Rep. 761 (1898).]

Name; increase of stock; borrowing; books — Ch. 66, §§ 14-19.

**Eighth.** To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-four, and may in like manner, change its corporate name, without in any wise affecting its rights, privileges or liabilities. And all acts performed, and rights acquired and obligations incurred by corporations under the authority of section eleven of the act to which this is amendatory [Ch. 23, Gen. Stat. 1868], are hereby saved to and against such corporation, notwithstanding the repeal of said section eleven. (L. 1872, ch. 104.)

**When change of name or number of directors takes effect.**

§ 14. Such change of name, or number of directors or trustees, shall take effect and be in force from the date at which the president or secretary of the corporation shall file with the secretary of State an affidavit, setting forth the name adopted, or the number of directors or trustees fixed, together with the date at which such change in name or number of directors or trustees was voted by the stockholders of such corporation. (Gen. Stat. 1868, ch. 23, § 12.)

Name. § 3. See § 13, subd. 8.

**Notice of change of name.**

§ 15. When the name of a corporation shall have been changed, as provided in this article [§ 13 of this chapter], notice of such change shall be immediately thereafter published by the president or other chief officer of the corporation, for six successive weeks, in some newspaper printed and published in the county in which the principal office of the corporation is located, and if there be no newspaper printed and published in such county, then in some newspaper having a general circulation therein. (Id., § 13.)

Name. § 5. Change of, not to be prejudicial.  
§ 15. See § 13, subd. 8.

**Increase of capital stock.**

§ 16. Any corporation may increase its capital stock to any amount not exceeding three times the amount of its authorized capital, by a vote of the stockholders in conformity with the by-laws thereof; or such corporation may increase its capital stock to any amount by a vote of the stockholders in conformity with the by-laws thereof, by an actual bona fide additional paid-up cash subscription thereto, equal to the amount of such increase; and if a majority of the stockholders shall vote for the increase of stock, the same may be increased by the board of directors, trustees or other business manager of such corporation; and upon such increase of stock being made in accordance with the by-laws, the date and amount of such increase shall be certified to the secretary of State by the directors or trustees,

and from the time such certificate is filed, the increase of stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the charter. (L. 1887, ch. 117, § 1.)

**Increase of stock of co-operative association.**

§ 17. Co-operative associations organized under the provisions of this act may, in the manner hereinbefore provided, further increase their capital stock to any amount not exceeding one hundred thousand dollars. (Id., § 1.)

**Corporation may issue preferred stock. § 104.**

[Stockholders who have voted for an unauthorized doubling of stock by their company, or who have voluntarily accepted benefits of such action, or who bought into the Corporation subsequent to the issuance of such stock, are estopped, as against the corporation, to contest the legality of such action. *Venner v. R. R. Co.*, 28 Fed. Rep. 581.]

**Power to borrow money.**

§ 18. Corporations shall have power to borrow money on the credit of the corporation not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, and may pledge the property and income of the corporation: Provided, however, That the provisions of this section shall not apply to the debentures or bonds of any loan or trust company, duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by a transfer of real estate or by other securities for the benefit and protection of purchasers of said debentures or bonds; such collaterals to be at least equal in amount to the par value of such bonds or debentures, and all real estate mortgage securities to be first liens on the property on which loans are made. (L. 1889, ch. 109, § 1.)

**General powers. § 13. Forgery. Ch. 100, § 164. Preferred stock. § 104.**

[A loan to a corporation, duly organized under the laws of the State, to be used as conditional stock, with the agreement by the directors of the association that while it is used it shall have the same advantage as other stock, but may be withdrawn at any time by giving thirty days' notice to the agent in writing. Held, that after giving the notice required in said agreement, plaintiff was entitled to a return from the corporation of the money so loaned. *Hinton v. Soc.*, 21 Kan. 683.]

**Subscription books.**

§ 19. Whenever the full amount of the capital stock of a corporation having a capital stock shall not have been already subscribed in good faith, the directors or trustees named in the charter, or a majority of them, shall within three months after the filing of the charter, cause books to be opened for receiving subscription to the capital stock of the corporation at such time or times, and

## Payment and transfer of stock — Ch. 66, §§ 20-22.

at such place or places, as they may determine, after having given at least thirty days' notice, in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books, which books shall be kept open till the whole amount of capital stock is subscribed. (Gen. Stat. 1868, ch. 23, § 16.)

## Payment of subscriptions. §§ 20-22.

[See Hunt v. Bridge Co., 11 Kan. 412; R. R. Co. v. Comrs., 36 id. 121; s. c., 12 Pac. Rep. 503.

A legislative act authorizing certain counties and cities to subscribe to stock of coal and gas companies, held to be unconstitutional. Geneseeo v. Gas Co., 55 Kan. 358; s. c., 40 Pac. Rep. 655.

An indefinite agreement to subscribe for capital stock in a corporation to be organized which does not satisfy the amount of capital stock to be employed, nor state what proportion of the stock subscribed anyone is to take, nor when or by whom the company is to be organized, cannot be enforced. Coal Co. v. Settle, 54 Kan. 424; s. c., 38 Pac. Rep. 483.]

## Payment of capital stock.

§ 20. The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amounts by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. (Id., § 28.)

[A stockholder will not be relieved from paying amount of his subscription to stock of a corporation created to build and maintain a flouring mill, by the fact that it is expending its money in building a mill dam. Ginrich v. Mill Co., 21 Kan. 61. Nor by reason of irregularities in adopting by-laws, or in the election of officers, where all stockholders and officers recognize and treat such by-laws and such election as legal and valid. Id.

When ten per cent. of the capital stock of a bridge company has been subscribed, and the company has organized under the provisions of said act, by electing directors and other proper officers, the company is then legally organized for the transaction of all business of the corporation and may compel each stockholder to pay the full amount of his stock for which he has subscribed, although only ten per cent. of the capital has yet been taken by individual stockholders. Hunt v. Bridge Co., 11 Kan. 412.

A parol agreement made at the time of subscribing for stock, and inconsistent with the written terms of the subscription, is immaterial, incompetent and void. Topeka v. Hale, 39 Kan. 23; s. c., 17 Pac. Rep. 601.

An agreement to pay assessments on the stock contained in book of subscription and signed by the parties sought to be charged, will bind him, notwithstanding some verbal understanding or agreement that some other member of the corporation will relieve such party from such stock and liability. Id.

A subscription for shares in a corporation thereafter to be formed under a general law, may be accepted by the board of directors after organization. McCormick v. Gas Co., 48 Kan. 614; s. c., 29 Pac. Rep. 1147. Original subscription held irrevocable. Id.

Where property is conveyed to the corporation in payment for shares of its capital stock, and the transaction is made a matter of record and subsequently approved and ratified by all the officers and stockholders of the corporation, such shares will, in the absence of fraud, be treated as fully paid. Walburn v. Chenault, 43 Kan. 352; s. c., 23 Pac. Rep. 657.]

## Failure to pay call.

§ 21. If any stockholder shall neglect to pay any installment, as required by the board of directors or trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice, in writing, to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock, and all previous payments thereon, will be forfeited for the use of the company; which notice may be served as aforesaid, at least thirty days previous to the day on which such payment is required to be made. (Id., § 29.)

[Where it is claimed by a stockholder that the stock held by him had been canceled, but no resolution or minute is adopted by the board of directors, and no record thereof is made, and it is also shown that the stockholder continued to act as an officer of said company after such claim of cancellation, the question of cancellation under such circumstances is a fact to be found by the court. Topeka Co. v. Hale, 39 Kan. 23; s. c., 17 Pac. Rep. 601.]

## Transfer of stock; who entitled to vote on stock.

§ 22. The stock of any corporation created under this act shall be deemed personal estate, and shall be transferable only on the books of the corporation, in such manner as the by-laws may prescribe; and no person shall, at any election, be entitled to vote on any stock unless the same shall have been standing in the name of the person so claiming to vote, upon the books of the corporation, at least thirty days prior to such election; but no shares shall be transferred until all previous assessments thereon shall be fully paid. (L. 1879, ch. 88, § 1.)

Power to regulate transfers. § 13, subd. 6. Stock is personal estate for purposes of taxation. Ch. 158, § 3.

[The assignment of a share of stock from one owner to another conveys and transfers not only the stock, but as incident thereto, the right to share in the profits of the corporation, in the proportion which the stock so transferred bears to the whole capital stock used in the enterprise for which the corporation was organized. Ryan v. R. R. Co., 21 Kan. 365.

To make a valid transfer of stock, the transfer must be made on the books of the corporation. Topeka Co. v. Hale, 39 Kan. 23; s. c., 17 Pac. Rep. 601.

A valid transfer of corporate stock can only be made on the books of the company, and the mere assignment and delivery of stock certificates will not divest the transferor of individual liability on such sale. Plumb v. Bank, 48 Kan. 484; s. c., 29 Pac. Rep. 609.

What is sufficient record of transfers within the meaning of the statute. Id.

Unless prohibited by law, a corporation may become the holder of a portion of its shares of stock. Johnson Co. v. Thayer, 94 U. S. 631.

The general rule is, that shares of stock are

## Directors; officers — Ch. 66, §§ 23-25.

personal property, and may be transferred like any other property, unless the transfer is restrained by the charter or articles of association, and that a bona fide transfer terminates the liability of a transferor either to the company or creditors. *Van Demark v. Barons*, 52 Kan. 779; s. c., 35 Pac. Rep. 798.]

**Stock to be used for legitimate purpose.**

§ 23. No corporation created under the provisions of this act, shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever, than to accomplish the legitimate objects of its creation. (Gen. Stat. 1868, ch. 23, § 26.)

**General powers. § 13.**

[Legislature of State where a corporation is created may confer upon it additional auxiliary powers. *R. R. Co. v. Fletcher*, 35 Kan. 238; s. c., 10 Pac. Rep. 586.

The vice-president and secretary of a manufacturing corporation, although the active managers of its business, have no authority to bind it by a promise to pay the debts of another and distinct corporation. *Rahm v. Mfg. Co.*, 16 Kan. 277; see, also, *Ehrgott v. Mfg. Co.*, 16 Kan. 486.

A bank organized under the laws of Kansas cannot purchase its own stock, except in some cases to secure a previously existing debt. *Bank v. Wulfekuhler*, 19 Kan. 60.

The directors of a bank have no power to purchase the stock of such bank. *Abeles v. Cochran*, 22 Kan. 405.

A. entered into a verbal contract with D., a director of a bank, to purchase fourteen shares of stock in the bank, at \$140 per share, upon the consideration that he should be made cashier. D. refusing to carry out his part of the contract, N. brought this action to recover damages for the breach thereof. Held, that the contract was void, being against public policy. *Noel v. Drake*, 28 Kan. 265.

The owners of a graded railroad bed can sell the same to a railroad company, whose officers, directors and stockholders are composed of the owners of the roadbed, and receive in payment therefor shares of the capital stock of the railroad company at a time when those who sell the roadbed and own and control the railroad company are the absolute owners of all the stock issued by the railroad company, and where the transaction occurs months before any other or additional stock is issued by the railroad company. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544.

A corporation may call its officers to account for their willful abuse of the trust, or for any misapplication of the funds of the corporation, or for any profits realized under a fraudulent contract. *Ryan v. R. R. Co.*, 21 Kan. 365.]

**Directors.**

§ 24. A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board and to transact all business of the corporation. An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require. (Id., § 17.)

Voting, manner of. §§ 3, 27. Failure to hold election. § 29. Number of directors may be increased. § 30. Powers and duties. § 31.

[See note to next section. The general rule is, that directors have no implied authority to act singly; they can act only as a board. It is also the general rule that where no provision is made in the statute, or in the by-laws of a corporation, for the notice required for regular meetings of directors, or the mode of calling special meetings,

all meetings must be called by special notice, to be given to each director. *Bank v. Shumway*, 49 Kan. 226; s. c., 30 Pac. Rep. 411.]

**Officers.**

§ 25. The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer of the corporation. The directors or trustees, before entering upon their duties, shall each take an oath or affirmation, faithfully to discharge the duties of his office. (Id., § 18.)

**Election of subordinate officers.** § 13, subd. 5. Annual report of officers. § 31. Treasurer's office must be within the State. § 44.

[A member of board of directors appointed by said board to act as treasurer, secretary or other ministerial officer of the corporation, is *prima facie* entitled to a reasonable compensation for his services as such. *Bank v. Drake*, 29 Kan. 311. If said officer assumes the duties upon an express contract as to compensation, such contract controls. Id.

The doctrine that directors of a bank are conclusively presumed to know its financial condition, as shown by its records and books, cannot be invoked to uphold a wrongful appropriation of money by an officer, which appropriation is made and entered on the books without actual knowledge of directors. Id.

An agent of a corporation who, acting as an individual, purchases corporate property from himself as agent, is liable to the corporation for the actual value of property so purchased. Id.

It is no defense to an action brought by a bank against its late cashier for a wrong appropriation of moneys, that at time of such appropriation he was owner of four-fifths of the stock in the bank, and has since that time sold all of said stock to other parties, who are now the officers and managing authority of the bank. Id.

Parties employed by the president of a corporation appearing as an active agent in the execution of any work, have a right to assume that such officer is acting for the corporation, and that his acts in that respect are its acts and binding upon it. *R. R. Co. v. Jones*, 30 Kan. 601; s. c., 2 Pac. Rep. 657.

A corporation may call its officers to account for their willful abuse of the trust, or for misapplication of corporate funds, or for any profits realized under a fraudulent contract. *Ryan v. R. R. Co.*, 21 Kan. 365.

Irregularities in election of officers, where all the stockholders and officers of the corporation recognize such election as valid, will not relieve a stockholder from paying his subscription to the capital stock. *Ginrich v. Mill Co.*, 21 Kan. 61.

Authority of corporate officers to execute a note, how proved. *R. R. Co. v. Tiernan*, 37 Kan. 606; s. c., 15 Pac. Rep. 544. Compensation of officers, see id.

When the offices of vice-president and treasurer are vested in one person, who is at the same time the managing and controlling officer, his relations to creditors and stockholders are of a fiduciary character and will not permit him to manage corporate affairs so as to result to his own pecuniary advantage. *Thomas v. Sweet*, 37 Kan. 183; s. c., 14 Pac. Rep. 545.

Where it is understood by the directors of a corporation that its officers are to be paid for services though no salary is fixed, a note given at the end of the year for a reasonable sum then agreed upon is valid. *Stewart v. Ry. Co.*, 41 Fed. Rep. 736.

Authority of officers of a corporation to execute notes and mortgages. *Baker v. Harpster*, 42 Kan. 511; s. c., 22 Pac. Rep. 415.

Those who deny the authority of president and secretary to execute a contract on behalf of the corporation, regular on its face, take upon themselves the burden of establishing their claim. *Sherman T. Co. v. Swigart*, 43 Kan. 292; s. c., 23 Pac. Rep. 569.

**By-laws; election of directors; powers; increase — Ch. 66, §§ 26-31.**

The knowledge of a corporate officer in respect to an authorized transaction, wherein such officer acted in his own interests and adversely to the corporation, cannot be held to be the knowledge of the corporation. Hart Pioneer Nurseries v. Coryell, Ct. of App. Kan., 55 Pac. Rep. 514 (1898).

A president of a corporation, in selling its stock, is bound to account for all profits derived from the transaction. Mulvain v. O'Brien, 58 Kan. 463; 49 Pac. Rep. 607 (1897).

Where the president and secretary execute a contract regular on its face, it is *prima facie* presumed to be executed with authority. Nat. Bk. of Commerce v. Atkinson, Ct. of App. Kan., 54 Pac. Rep. 8 (1898).]

**By-laws.**

§ 26. The directors or trustees may adopt by-laws for the government of the corporation; but such by-laws may be altered, changed or amended by a vote of the stockholders, at an election to be ordered for that purpose, by the directors or trustees, on the written application of a majority of the stockholders or members. (Id., § 19.)

See § 18, subd. 6. By-laws may prescribe method of paying subscriptions. § 20. And time and place of elections. § 27. And declaring dividends. § 31. And of transfer of stock. § 22.

[A by-law of a corporation can have no effect upon the contract of a corporation with other parties, and is a mere rule for the government of the officers of the company in managing their own business. Samuels v. Holliday, McCahon's Rep. 214.

When it is provided by the by-laws of the corporation that compensation of officers shall be fixed and allowed by board of directors, and the board has not fixed any compensation, a secretary who has rendered services is entitled to recover therefor, unless there was an understanding that he was to render such services without compensation. R. R. Co. v. Richards, 8 Kan. 101.]

**Election of directors.**

§ 27. In all elections for directors or trustees of any incorporated company each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or trustees to be elected at such election, and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, and such directors or managers shall not be elected in any other manner. (L. 1881, ch. 47, § 1.)

**Every stockholder shall vote. § 3.**

**Id.; of co-operative association.**

§ 28. In the election of directors or trustees of co-operative associations that have or may hereafter by their by-laws so determine, no stockholder shall be allowed to cast more than one vote, multiplied by the number of directors or trustees of any such association. (Id.)

**Failure to elect directors.**

§ 29. In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation formed under the provi-

sions of this act, such corporation shall not, for that reason, be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors or trustees in such manner as shall be prescribed by the by-laws thereof. (Gen. Stat. 1868, ch. 23, § 21.)

See § 24.

**Increase of number of directors.**

§ 30. All corporations heretofore created and now in existence under any law of this State, are hereby authorized to increase the number of directors or trustees of any such corporation. (Id., § 20.)

**Powers of directors; books; reports to stockholders.**

§ 31. The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the by-laws may prescribe. They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder. They shall also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation, as they shall deem expedient, or as the by-laws may prescribe. (Id., § 23.)

**Directors, election of. § 27. Oath of. § 25. Increase of. § 14. Individual liability of. § 32. Shall be trustees of dissolved corporation. §§ 47-48.**

[Directors of a corporation are its primary agents, and, in reference to corporate property, act in the relation of trustee. Such relation requires of them the utmost good faith in their transactions for the corporation and its stockholders, and does not permit them to manage its affairs for their personal advantage. Ryan v. R. R. Co., 21 Kan. 365.

When stockholders may maintain an action against officers. Id.

The officers and directors of a corporate body are trustees of the stockholders, and in securing to themselves an advantage not common to all stockholders, they commit a plain breach of duty. Bank v. Drake, 29 Kan. 321; Koehler v. Iron Co., 2 Black (U. S.), 715.

The relation between directors and stockholders is that of trustee and cestui que trust, and a contract made by a director to secure personal advantage to himself is either void or injures to the benefit of the corporation. Sargent v. K. M. R. R. Co., 48 Kan. 672; s. c., 29 Pac. Rep. 1063.

Directors of an insolvent corporation, who are creditors of the same, cannot take advantage of their position to secure a preference for themselves, and must share ratably with the other general creditors in the distribution of the company's assets. Hays v. Bank, 51 Kan. 535; s. c., 38 Pac. Rep. 318.

Before a stockholder can maintain an action in his own name to obtain a remedy for wrongs committed against the corporation, it must appear that he has in good faith, but without suc-

## Dividends; conveyances; records; existence — Ch. 66, §§ 32–38.

cess, attempted to secure action by the directors or managing officers of the corporation, or that demand for their action would be unavailing. R. R. Co. v. Sumner Co., 51 Kan. 617; s. c., 33 Pac. Rep. 812.

Where a liability or debt is incurred before the organization of a corporation is completed, the persons assuming to act as directors are personally liable. Walton v. Oliver, 49 Kan. 107; s. c., 30 Pac. Rep. 172.

In all elections for directors of the corporation created by or existing under the laws of Kansas, at least three must be citizens and residents of the State. Horton v. Wilder, 48 Kan. 222; s. c., 29 Pac. Rep. 566.]

**Liability for unlawful dividends.**

§ 32. If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted, as long as they shall respectively continue in office. The amount for which they shall all be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent, at the time of making the dividend, or shall object thereto at the time such dividend is declared, and shall file their objections in writing, with the secretary or other officer of the corporation, having charge of the books, they shall be exempted from the said liability. (Id., § 31.)

[Stockholders of a corporation are not entitled to any division of the profits and moneys of the corporation until all its debts are paid. Ryan v. Ry. Co., 21 Kan. 365.]

**Conveyance of lands.**

§ 33. Any corporation may convey lands by deeds, sealed by the common seal of the corporation, and signed by the president, vice-president, or presiding member or trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. And all deeds purporting to convey real estate, [of a corporation,] and heretofore signed and acknowledged by the vice-president of such corporation, and sealed as herein stated, shall have the same force and effect as if the same had been signed by the president thereof. (L. 1887, ch. 118, § 1.)

**Power to convey.** § 13, subd. 4; ch. 117, § 31.

**Religious corporations.**

§ 34. The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation, and the title to all property of any such corporation shall vest in such trustees. (Gen. Stat. 1868, ch. 23, § 22.)

**Corporations may sue members.**

§ 35. All bodies corporate may sue for recover and receive from their respective members, all arrears or other debts, dues and other demands, which now are, or hereafter may be, owing to them, in like mode, manner, and form, as they might sue for, recover and receive the same from any person who might not be one of their body. (Id., § 30.)

[Court may permit an amended petition to be filed, showing the expiration of the life of a corporation, the date of its dissolution, and the name of its sole manager at the time of such dissolution, in an action commenced by the sole manager of the corporation, in the corporate name after its dissolution to recover certain debts and property of the dissolved corporation. Upon the filing of such amended petition, the action must be continued in the name of the manager of the late corporation, corresponding with the allegation of the amended petition. Paola Co. v. Krutz, 22 Kan. 727.]

**Records of corporation.**

§ 36. The records of any company, incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party. (Id., § 39.)

[Parol evidence is admissible to show that a resolution of the board of directors of a railroad company, entered upon the records of its proceedings, did not correctly recite the amount of money found due in order to be paid to one of its officers. R. R. Co. v. Tiernan, 37 Kan. 606; s. c., 15 Pac. Rep. 544.]

Corporate records and minutes are not competent evidence as between strangers. Dolan v. Wilkerson, 57 Kan. 758; 48 Pac. Rep. 23.]

**Mistake in name.**

§ 37. No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise or bequest to the same; nor shall a change in the name of a corporation prejudice any person not having actual notice thereof. (Id., § 37.)

**Corporate name.** § 5. Change of. §§ 14, 15.

**Extension of existence.**

§ 38. The duration of any corporation may be continued, and its corporate existence extended, under and subject to the general laws of this State, for successive periods of twenty years, or for such length of time as may be stated in its certificate therefor, by the filing with the secretary of State, at any time, a certificate of its desire and intention to extend its time of existence as aforesaid, signed and duly acknowledged before some proper officer, by the president and secretary of such corporation, after being authorized by its board of directors or its trustees, and approved by two-thirds of its stockholders, in writing, or by a two-thirds vote of its stockholders present at any meeting duly

## Corporations for public improvements; annual reports — Ch. 66, §§ 39-41.

and legally called and held for that purpose; and thereupon, and from the date of the filing of said certificate, the time of the existence of such corporation shall be continued and extended for a further period of twenty years, or for such period as may be set forth in said certificate, with all the powers, rights, and franchises, and subject to all the duties and obligations, of corporations of its class by the general laws of this State: Provided, That nothing herein contained shall be held or construed to extend or continue to any corporation organized or existing under any special charter or any general or special law of the territory of Kansas, any special franchise, privilege, immunity, or exemption not possessed by corporations organized under the general law; but by accepting or availing itself of the provisions of this act, any such corporation shall be deemed and held to waive and surrender any and all such special franchises, privileges, immunities, and exemptions. (L. 1886, ch. 62, § 2.)

**Limit of existence.** § 13, subd. 1, and cross-references.

[See *State v. Bridge Co.*, 22 Kan. 438.]

**Corporations for erecting public improvements, time extended.**

§ 39. Whenever any company heretofore incorporated for the purpose of erecting any public improvement in this State, whose charter is limited as to the time for completion of said improvement, and when any such company has been legally organized and has actually commenced and has in progress toward completion such public improvement, it shall be lawful for any such company to have further time allowed for the final completion of said work, as is hereinafter provided. (Gen. Stat. 1868, ch. 23, § 34.)

**Id.**

§ 40. Upon petition being filed by the directors of the corporation in the probate court of any county in which the principal office of such corporation is located, and upon giving thirty days' notice by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after publication of said notice, on good cause shown, decree the extension of the time for the completion of said improvement, to such period as shall appear to such court just and reasonable. (Id., § 35.)

[A petition under this section need not aver the recovery of judgment against the corporation, or a return of an execution unsatisfied. An allegation of suspension of business for over one year is sufficient. *Krider v. Coley*, 7 Kan. App. 249; 51 Pac. Rep. 919 (1898).]

**Report to secretary of State.**

§ 41. It shall be the duty of the president and secretary or of the managing officer of each corporation for profit doing business in this State, except banking, insurance and railroad corporations, annually, on or before the 1st day of August, to prepare and deliver to the secretary of State a complete detailed statement of the condition of such corporation on the 30th day of June next preceding. Such statement shall set forth, and exhibit the following, namely: 1st, The authorized capital stock; 2d, The paid-up capital stock; 3d, The par value and the market value per share of said stock; 4th, A complete and detailed statement of the assets and liabilities of the corporation. 5th, A complete and detailed statement of the receipts and expenditures of the corporation for the year next preceding. 6th, A full and complete list of the stockholders, with the post-office address of each, and the number of shares held and paid for by each. 7th, The names and post-office addresses of the officers, trustees or directors and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held. Such reports shall be made upon and in conformity to blanks prepared by the secretary of State and approved by the charter board. The fee for filing such report and making a certificate that the same has been made and is on file shall be one dollar. The secretary of State may, at any time, require a further or supplementary report under this section, which shall contain information and data upon such matters as the secretary of State may specify. It shall also be the duty of the president and secretary of any such corporation, as soon as any transfer, sale or change of ownership of any such stock is made as shown upon the books of the company, to at once file with the secretary of State a statement of such change of ownership, giving the name and address of the new stockholder or stockholders, the number of shares so transferred, and the par value and the amount paid on such stock. No transfer of such stock shall be legal or binding until such statement is made as provided for in this act; provided, however, that no transfer of stock shall release the party so transferring from the liability of the laws of this State as to stockholders of corporations for profit, for ninety days after such transfer and the filing and recording thereof in the office of the secretary of State. The records of the secretary of State shall be prima facie evidence of the stockholders of such corporation, the number of shares held by each, and the amount paid on each share of said capital stock. No action shall be maintained or recovery had in any of the courts of this State by any corporation doing business in this State without first obtaining the certificate of the secretary of State that the statements provided for in this section have been properly made. (Gen.

## Offices in State; dissolution — Ch. 66, §§ 42-46.

Stat. 1868, ch. 23, § 24; as amended by L. 1898, ch. 10; approved January 7, 1899.)

[This section applies to all classes of corporations, purely private as well as quasi-public. Section construed generally. State ex rel. Boyle v. Fenn, Sup. Ct. Kan., 56 Pac. Rep. 483 (1899).]

## General office within State.

§ 42. Every corporation created by or existing under the laws of this State, shall have and keep a general office for the transaction of business, and shall keep such office within this State, and shall have at least three of its directors citizens and residents of this State; and in case such corporation is a railroad or a railway company, it shall have such general office located on or near the main line of its road or route mentioned in its charter. At such general office shall be kept the records and books of the corporation, and also of the office of the superintendent, general manager or director, secretary, auditor, treasurer and paymaster, general freight agent and general ticket agent, under whatever name the duties usually pertaining to such offices may be transacted, together with all books of account appertaining to the business of such offices. (L. 1874, ch. 3, § 1.)

Treasurer's office must be within State. § 44. Certificate must state principal place of business. § 5.

## Id.

§ 43. Any corporation failing or refusing to obey any of the provisions of the first section of this act for the period of six months shall be deemed to have forfeited its charter, and such forfeiture may be decreed by any district court of any county in which such corporation may do business, or into which any line of such railroad or railway may extend, in an action to be instituted for that purpose, in the name of the State of Kansas, by the county attorney of the county in which such action is prosecuted. (Id.)

[A domestic corporation which fails for more than six months to keep its general offices within the State, and fails to keep the office of its treasurer and its moneys within the State, forfeits its charter. State v. Topeka Water Co., 59 Kan. 151; 52 Pac. Rep. 422 (1898).]

## Money to be kept within State.

§ 44. All corporations or joint-stock companies of every description, whether organized and acting under a special charter or under the general law of the State, shall keep the office of their treasurer, or other officer or person keeping the funds, earnings or income of the corporation, within this State; and all earnings, income, profits and moneys collected by any corporation or joint-stock company operating under the law of this State, until the same is disbursed or divided by the directors or other officers authorized to make division. (Id.)

General office must be within State. §§ 42-44. See note to § 43.

## DISSOLUTION OF CORPORATIONS.

(Gen. Stat. 1868, ch. 23, §§ 45-52.)

## How dissolved.

§ 45. A corporation is dissolved — first, by the expiration of the time limited in its charter, second, by a judgment of dissolution rendered by a court of competent jurisdiction; but any such corporation shall be deemed to be dissolved for the purpose of enabling any creditors of such corporation to prosecute suits against the stockholders thereof to enforce their individual liability, if it be shown that such corporation has suspended business for more than one year.

## Time limit. § 13, subd. 1.

[The statements in a petition that an incorporated bank has long since ceased to transact business, is insolvent, and has no property or assets of any description out of which money alleged to be due can be collected by execution or otherwise, are not equivalent to an allegation that the corporation is dissolved. Bank v. Cong. Soc., 28 Kan. 423.]

An action for the dissolution of a corporation was settled by the parties before judgment by a written stipulation in the case; a petition by a third party to be made a party defendant, to contest plaintiff's case upon its merits, was properly overruled. Roller v. Snodgrass, 14 Kan. 583.

Stockholders who organize themselves as a corporation, transact business, and hold themselves out to the world as such corporation, cannot deny their liability as stockholders therein when proceeded against by creditors, on the ground that the preliminary steps of the organization were irregular. Aultman v. Waddle, 40 Kan. 195; s. c., 19 Pac. Rep. 730. See case from 28 Kan. 426.

Certain facts held not to have worked a dissolution. Eureka, etc., Co. v. City Kan., 48 Pac. Rep. 935.

Courts vested with discretion will ordinarily only forfeit a corporate franchise where no other adequate remedy is available. City of Topeka v. Topeka Water Co., 58 Kan. 349; 49 Pac. Rep. 79 (1897).

A corporation which has turned over its assets to another corporation is not defunct. Eureka Light and Ice Co. v. City of Eureka, 5 Kan. App., 689; 48 Pac. Rep. 1037 (1898).

A corporation which ceases to do business for more than one year is deemed dissolved for the purpose of enabling creditors to enforce the individual liability of stockholders; but for such purpose only. Sleefer v. Norris, 59 Kan. 555; 53 Pac. Rep. 757 (1898).

When corporation suspends business for more than a year it is dissolved so far as to enable creditors to enforce liability of stockholders. First Nat. Bank v. King, Sup. Ct. Kan., 57 Pac. Rep. 952 (1899).]

## Dissolution by failure to commence operations.

§ 46. Every corporation created under this act or any general law of this State shall commence active operations within one year after filing its charter with the secretary of State, and in default thereof, said corporation shall become and be dissolved by operation of law and without judicial proceedings to that end, and notice of such dissolution shall be published by the secretary of State in the official State paper for three consecutive weeks thereafter; provided, that no corporation shall commence

## Receivers; liability of trustees; of stockholders — Ch. 66, §§ 47–49.

business until it shall file with the secretary of State an affidavit, made by its president and secretary, setting forth that not less than twenty per cent. of its authorized capital has been paid in actual cash. (Gen. Stat. 1868, ch. 23, § 41; as amended by L. 1898, ch. 10; approved January 7, 1899.)

**Appointment of receiver.**

§ 47. Upon the dissolution of any corporation already created by or under the laws of this State, unless a receiver is appointed by some court or competent authority, the president and directors, or managers of the affairs of the corporation, at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation, at the time of its dissolution, as far as such money and property will enable them; and for this purpose they may maintain or defend any judicial proceeding. (*Id.*, § 42.)

[An action brought by the sole manager of a corporation, after its dissolution, to recover its debts and property, must be brought in name of such manager and not in corporate name of the dissolved corporation. *Paola Town Co. v. Krutz*, 22 Kan. 727.]

Unless a receiver is appointed upon dissolution, the president and directors, or managers of the affairs of the corporation, are the trustees of the creditors and stockholders, with full power to settle its affairs, and may maintain or defend any judicial proceeding to that end. *Id.*

**Actions by dissolved corporation against its members.** *Id.*

Held, that when a bridge corporation expired by limitation, its franchises and license to demand toll expired. *State v. Bridge Co.*, 22 Kan. 438.

It is not error for the trial court, in its discretion, to refuse to enter judgment on a verdict in favor of an extinct corporation, and to set aside the verdict and grant a new trial, upon the payment of all costs by the defendant, although existence of corporation is not raised in the pleadings, and expiration of charter is proved by documentary evidence offered in behalf of the corporation. *Chair Co. v. Kelsey*, 23 Kan. 632.

A corporation was, by its charter, to continue its existence for five years. At the end of that period, S. commenced an action against the corporation and others to recover land which he had conveyed to it, claiming that the corporation had been dissolved by lapse of time, and that the land had reverted to him. Held, that such claim was not tenable. *Sword v. Wickersham*, 29 Kan. 748.

**Trustees or directors of a dissolved corporation cannot act for their own private advantage.** See note to § 1180.

Officers and stockholders of an insolvent corporation cannot distribute the capital and assets among themselves in payment of indebtedness due them. Any excluded creditor will be entitled to pursue such assets into the hands of any person who has taken the same with full knowledge of the facts. *Bridge Co. v. Fowler*, 55 Kan. 17; *s. c.*, 39 Pac. Rep. 727. Directors and managers cannot enter into an arrangement to secure to themselves preference over other creditors. *Id.* Where a receiver of a corporation brings an action upon judgment in favor of said corporation, the statute of limitations does not run during the pendency of such action. *Id.*]

**Liability of trustees on dissolution.**

§ 48. The trustees mentioned in the last section shall be severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall have come into their hands.

[Directors of corporations in reference to corporate property act in the relation of trustees, and can make no division of such property which shall not give to each stockholder his proportionate share. *Hale v. Rep. Co.*, 8 Kan. 466.]

While a trustee is not an insurer he is, nevertheless, bound to the utmost good faith, may acquire no interest adverse to the trust and must exercise such care and diligence in respect to the discharge of the trust as, under all circumstances, having regard to the magnitude of the trust and interests involved and the consequences of mistake, would be reasonable. *Morrow v. Sallie Co.*, 21 Kan. 484.]

**Suits against stockholders.**

§ 49. If any corporation, created under this or any general statute of this State, except railway or charitable or religious corporations, be dissolved, leaving debts unpaid, suits may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered, and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution, for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from property of each stockholder, respectively; and if any number of stockholders (defendants in the case) shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

See Const., art. XII, § 2, and cross-references.

[In an action brought against an incorporated bank to recover money due upon a certificate of deposit in which the petition fails to show that the bank is dissolved or that primarily there is a liability against the stockholders within the terms of the statute, no judgment can be rendered against the stockholders; if the execution issued thereon against the property of the corporation be returned nulla bona, execution may then issue against any of the stockholders to an extent equal in amount to the stock owned by him. *Bank v. Soc.*, 28 Kan. 423.]

Stockholders who organize themselves as a corporation, transact business, and hold themselves out to the world as such corporation cannot, when proceeded against by creditors, set up as a defense that the preliminary steps of the organization were irregular; nor can they deny their liability as stockholders therein. *Aultman v. Wade*, 40 Kan. 195; *s. c.*, 19 Pac. Rep. 730.

Where two or more suits are commenced under above section, and judgments are obtained against the stockholders in such suits at the same term, and executions are issued thereon during the term or within ten days thereafter, the funds raised thereon, or upon any one of such executions, must be distributed pro rata among all such execution

## Dissolution when insolvent — Ch. 66, § 50.

creditors. Clevenger v. Hansen, 44 Kan. 182; s. c., 24 Pac. Rep. 61.

Under above section the liability of stockholders to the creditors of a corporation is several and not joint, and each must be sued separately. Abbey v. Dry Goods Co., 44 Kan. 415; s. c., 24 Pac. Rep. 426; Howell v. Bank, 52 Kan. 133; s. c., 34 Pac. Rep. 395.

## Dissolution when corporation is insolvent.

§ 50. If any execution shall have been issued against the property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property upon which to levy such execution, such corporation shall be deemed to be insolvent, and upon application to the court from which said execution was issued, or to the judge thereof, a receiver shall be appointed, to close up the affairs of said corporation. Such receiver shall immediately institute proceedings against all stockholders to collect unpaid subscriptions to the stock of such corporation, together with the additional liability of such stockholders equal to the par value of the stock held by each. All collections made by the receiver shall be held for the benefit of all creditors, and shall be disbursed in such manner and at such times as the court may direct. Should the collections made by the receiver exceed the amount necessary to pay all claims against such corporation, together with all costs and expenses of the receivership, the remainder shall be distributed among the stockholders from whom collections have been made, as the court may direct; and in the event any stockholder has not paid the amount due from him, the stockholders making payment shall be entitled to an assignment of any judgment or judgments obtained by the receiver against such stockholder, and may enforce the same to the extent of his proportion of claims paid by them. (Gen. Stat. 1868, ch. 23, § 32; as amended by L. 1898, ch. 10; approved January 7, 1899.)

See Const., art. XII, § 2, and cross-references.

[Stockholders' claims are subordinate to those of creditors. Ryan v. Ry. Co., 21 Kan. 365.

An execution may issue against a stockholder after judgment and return of nulla bona against the corporation to an extent equal in amount to the amount of stock owned by such stockholder. Bank v. Soc., 28 Kan. 423.

Where the cashier of a bank gives a credit to a person having an overdrawn account, which has been overdrawn for several months, for an insufficient and illegal consideration, such officer is bound to know the same within less than several days thereafter, and also to know where his bank is in an embarrassed condition. Bank v. Wulfknher, 19 Kan. 60.

The acts of the cashier in said transaction cannot estop the bank as against W., who is a director and the vice-president of the bank. Id.

Sufficiency of petition to establish the defendant's liability as a stockholder in a corporation. Head v. Daniels, 38 Kan. 1; s. c., 15 Pac. Rep. 911.

The notice required under above section is in the nature of an original process, and must be served substantially like a summons in a personal action. The service of such notice beyond the jurisdiction of the court will not confer jurisdiction or authorize the court to award an execu-

tion against the property of stockholders that may be found within the State. Grund v. Tucker, 5 Kan. 70; Hentig v. James, 22 Kan. 326; Howell v. Manglesdorf, 33 id. 194; s. c., 5 Pac. Rep. 759.

As to proceedings in aid of executions under above section, see Hentig v. James, supra.

A judgment creditor of an insolvent corporation who first moves, in conformity to the provisions of above section, to charge a stockholder on his liability, acquires a priority of right to recovery against such stockholder, with which a creditor subsequently moving cannot rightfully interfere. Wells v. Robb, 43 Kan. 201; s. c., 23 Pac. Rep. 158.

What is sufficient notice, under above section, to charge stockholders. Id.

In a proceeding by a creditor of a corporation against a stockholder thereof, under above section, such stockholder cannot purchase claims against the corporation at a discount, and then set them off against his liability at their face value. He can only set off such claims, in discharge of his liability, to the amount actually paid by him thereto. Abbey v. Long, 44 Kan. 688; s. c., 24 Pac. Rep. 1111.

If the stockholder contests his liability, and the contest is decided against him, it is not error to tax the cost of such proceeding against him. Id.

No appeal from order of justice against stockholder under above section. Healey v. Deepwater Co., 48 Kan. 617; s. c., 29 Pac. Rep. 1088.

Rights of stockholders and creditors construed. Pickens v. Taylor, 47 Kan. 294; s. c., 27 Pac. Rep. 986.

Judgment creditors of a corporation seeking enforcement of their rights against stockholders thereof, under above section, must strictly comply with its provisions. Hoyt v. Bunker, 50 Kan. 574; s. c., 32 Pac. Rep. 126.

Such creditors cannot resort to the funds in the hands of the stockholders of said corporation to satisfy their judgments against it until they have exhausted the corporate property. Id. The corporation has no power to entertain motions for orders allowing executions against stockholders, until the record of the case in which the motion is made shows that the corporate property has been exhausted. Id. Priorities among creditors. Id.

In order to charge persons as stockholders it must be shown that they subscribed to the stock of the particular corporation on account of which the liability is claimed, or that they have, in some manner, recognized their liability as such stockholders. Bank v. Votaw, 51 Kan. 362; s. c., 32 Pac. Rep. 1111.

The mere signing of subscription paper for stock in a contemplated company held not to render defendants liable to creditors of the corporation as stockholders. Id.

The liability of a stockholder against whom an execution may be issued under provisions of above section is measured by the number of shares held by him at time execution against the property of the corporation is found to be ineffectual. Van Demark v. Barons, 52 Kan. 779; s. c., 35 Pac. Rep. 798.

A motion made under above section, for execution against a stockholder, can only be made in a court where the judgment against the corporation was rendered, and from which execution on such demand might issue. McClelland v. Cragun, 54 Kan. 599; s. c., 38 Pac. Rep. 776. Notice of the motion for execution in such case may be served on the stockholder in any county in this State. Id. What is sufficient notice to confer jurisdiction. Id.

An agreement to purchase stock in the future which has not been acted upon for three years does not create an individual liability on the part of the signers as to creditors of the corporation. U. S. W. etc., Co. v. Davis, 2 Kan. App. 611; 42 Pac. Rep. 590.

Execution against a stockholder under above section cannot be granted until the case shows that the corporate property has been exhausted. Carey Lumb. Co. v. Neal, 3 Kan. App. 399; 42 Pac. Rep. 925.

A summary process to enforce the liability of a stockholder in an insolvent corporation cannot be legal against the estate of a deceased stockholder.

## Names of stockholders; preferred stock, etc.—Ch. 66, §§ 52, 53, 98, 100, 104.

**Achenbach v. Coal Co.**, 2 Kan. App. 357; 42 Pac. Rep. 734; **Same v. W. N. Union**, *Id.*

Two or more creditors of an insolvent corporation may proceed together against the stockholder to enforce his statutory liability. **Bulst v. Bank**, 4 Kan. App. 700; 46 Pac. Rep. 718.

In an action against a delinquent stockholder of an insolvent corporation, he may show that he was fraudulently induced to subscribe to the capital stock. **Beal v. Dillon**, 5 Kan. App. 27; 47 Pac. Rep. 317.

An assignee of an insolvent corporation may sue a delinquent stockholder to collect an unpaid subscription. *Id.*

In proceedings to enforce the liability of stockholders, a creditor cannot include several judgments in one notice. **Bank v. Magnuson**, 57 Kan. 573; 47 Pac. Rep. 518.

A stockholder cannot sue another on his statutory liability for the corporation debts unless he has discharged his own statutory liability. **Milford Savings Bank v. Joslyn**, 59 Kan. 778; 53 Pac. Rep. 756 (1889).

Where a stockholder of an insolvent corporation, when sued by a judgment creditor, holds bonds of the company, he is entitled to extinguish his liability to the extent of the bonds, on assignment of such bonds to the judgment creditor. **Van Pelt v. Strickland**, Sup. Ct. Kan., 57 Pac. Rep. 498 (1899).

The corporation is not a necessary party to a proceeding to enforce individual liability of stockholder. **Fox v. First Nat. Bk.**, Ct. App. Kan., 57 Pac. Rep. 241 (1899).

The books of a corporation, unsupported by other evidence, are inadmissible to prove membership in a corporation in a suit to enforce individual liability of a stockholder. **Hinsdale Sav. Bk. v. New Hampshire Banking Co.**, 59 Kan. 716; 54 Pac. Rep. 1051 (1889).

In a proceeding by a creditor under this section, a stockholder can set off such claims as he has paid on execution. **Musgrave v. Glen Elder, etc.**, Alliance, 5 Kan. App. 393; 49 Pac. Rep. 338 (1897). He can also set off an indebtedness owed to him by the corporation. *Id.*; **Kendall v. Underhill**, Ct. of App. of Kan., 56 Pac. Rep. 544 (1899).

No liability exists against a stockholder until a judgment has been rendered against the corporation, and execution returned unsatisfied, or until the corporation has been dissolved, or has suspended business for one year. **Merrill v. Meade**, 7 Kan. App. 620; 49 Pac. Rep. 787 (1897).

In a proceeding to enforce the individual liability of a stockholder, an unimpeached judgment against the corporation is conclusive as to amount of indebtedness. **Ball v. Reese**, 58 Kan. 614; 50 Pac. Rep. 875 (1897).

A creditor of an insolvent corporation may enforce the individual liability of stockholders under this section, when there is no property subject to be taken on execution, notwithstanding there may be assets of the corporation in the hands of an assignee. **Sleefer v. Norris**, 59 Kan. 555; 53 Pac. Rep. 757 (1897).

This section only authorizes the issue of execution against persons who were stockholders at the time the execution was returned nulla bona. **Parkinson Sugar Co. v. Topeka Sugar Co.**, Ct. of App. of Kan., 54 Pac. Rep. 331 (1898).

An execution returned "No property found" issued on a judgment against a corporation, is sufficient to justify a suit against a stockholder under this section. **Thompson v. Pfeiffer**, Sup. Ct. Kan., 56 Pac. Rep. 763 (1899).

A stockholder in an insolvent corporation, against which a judgment has been rendered, may voluntarily discharge his statutory liability to its creditors by making a payment to one of them without waiting the return of an execution nulla bona. If made in good faith such payment is a bar to proceedings by other creditors. **Sedgwick Bk. v. Sedgwick Milling, etc., Co.**, 59 Kan. 654; 54 Pac. Rep. 681 (1898).]

**Liability of stockholders.**

§ 51. The stockholders of every corporation, except railroad corporations or corpora-

tions for religious or charitable purposes, shall be liable to the creditors thereof for any unpaid subscriptions, and in addition thereto for an amount equal to the par value of the stock owned by them, such liability to be considered an asset of the corporation in the event of insolvency, and to be collected by a receiver for the benefit of all creditors. (Gen. Stat. 1868, ch. 23, § 46; as amended by L. 1898, ch. 10; approved January 7, 1899.)

See notes to preceding section.

**Officer in charge of books to furnish names of stockholders.**

§ 52. The clerk or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the names and places of residence of the stockholders (so far as known), and the amount of stock held by each, as shown by the books of the corporation. (*Id.*, § 45.)

**Contribution by stockholders.**

§ 53. If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action. (*Id.*, § 46.)

See Const., art. XII, § 2, and cross-references.

**Co-operative societies.**

§ 98. Twenty or more persons in this State may organize and incorporate a co-operative society or company in the manner and form provided by law in other cases, for the purpose and to the end of more successfully promoting and conducting any industrial pursuit. (L. 1887, ch. 116.)

**Id.**

§ 99. Every such society or company when so organized shall enjoy all the rights, privileges and powers conferred by law on other chartered or incorporated companies in this State. (*Id.*)

**Id.**

§ 100. The shareholders in any such society or company shall each have but one vote in all matters pertaining to the business of such society or company, without regard to the number of shares owned. (*Id.*)

**Preferred stock.**

§ 104. It shall be lawful for any corporation now organized or that may be hereafter organized under and by virtue of the laws of the Territory or the State of Kansas to issue preferred stock: Provided, All the stockholders of any corporation so issuing preferred stock shall give their assent to such issue. (L. 1895, ch. 249.)

## Boards of arbitration — Ch. 73, §§ 1-7.

**CHAPTER LXVII.****Of Warehouses, Elevators and Granaries.**  
**Formation of corporations for such purposes.**

Section 1. In addition to the purposes for which private corporations may be formed, as designated in section five of chapter twenty-three of the general statutes of 1868, as said section has been heretofore enlarged and amended (§ 66 of chapter 4 of this work) private corporations may be formed and organized in the manner prescribed in said chapter for the construction and maintenance of warehouses, elevators and granaries. (L. 1872, ch. 206, § 1.)

**CHAPTER LXXXIII.****Of Labor and the Protection of Labor.**

Sec. 1-11. Boards of arbitration.  
 12. Hours of labor.  
 15-21. Weekly payment of wages.  
 21a-21b. Wages for labor, how paid.  
 22-26. Certain methods of payment prohibited.  
 27. Labor day.  
 30, 31. Discrimination against labor organizations.  
 32-35. Detectives to be residents of Kansas.  
 36-39. Blacklisting prohibited.  
 40-45. Trade-marks and labels of working-men.

**Boards of arbitration.**

Section 1. The district court of each county, or a judge thereof in vacation, shall have the power, and upon presentation of a petition as hereinafter provided it shall be the duty of said court or judge to issue a license or authority for the establishment within and for any county within the jurisdiction of said court of a tribunal for voluntary arbitration and settlements of disputes between employers and employed in the manufacturing, mechanical, mining and other industries. (L. 1886, ch. 28.)

**Petition for establishment.**

§ 2. The said petition shall be substantially in the form hereinafter given, and the petition shall be signed by at least five persons employed as workmen, or by two or more separate firms, individuals, or corporations within the county who are employers within the county; provided, that at the time the petition is presented the judge before whom said petition is presented may upon motion require testimony to be taken as to the representative character of said petitioners; and if it appears that the requisite number of said petitioners are not of the character they represent themselves to be, the establishment of said tribunal may be denied, or he may make such other order in that behalf as shall to him seem fair to both sides. (Id.)

**Form of petition.**

§ 3. The form of petition praying for a tribunal under this act shall be as follows:

"To the District Court of ..... County (or judge thereof, as the case may be:) The subscribers hereto, being the number and having the qualifications required in this proceeding, being desirous of establishing a tribunal of voluntary arbitration for the settlement of disputes in the manufacturing, mechanical, mining and other industries, pray that a license for a tribunal of voluntary arbitration may be issued, to be composed of four persons and an umpire, as provided by law." (Id.)

**License for establishment.**

§ 4. If the said petition shall be signed by the requisite number of either employers or workmen, and be in proper form, the judge shall forthwith cause to be issued a license, authorizing the existence of such a tribunal, and containing the names of four persons to compose the tribunal, two of whom shall be workmen and two employers, all residents of said county, and fixing the time and place of the first meeting thereof; and an entry of the license so granted shall be made upon the journal of the district court of the county in which the petition originated. (Id.)

**Umpire; decision of board.**

§ 5. Said court at the time of the issuance of said license shall appoint an umpire for said tribunal, who shall be sworn to impartially decide all questions that may be submitted to him during his term of office. The umpire shall be called upon to act after disagreement is manifested in the tribunal by failure to agree during three meetings held and full discussion had. His award shall be final and conclusive upon such matters only as are submitted to him in writing signed by the whole of the members of the tribunal, or by parties submitting the same. And the award of said tribunal shall be final and conclusive upon the questions so submitted to it; provided, that said award may be impeached for fraud, accident or mistake. (Id.)

**Organization of board.**

§ 6. The said tribunal when convened shall be organized by the selection of one of their number as chairman, and one as secretary, who shall be chosen by a majority of the members. (Id.)

**Term of existence; vacancies.**

§ 7. Said tribunal shall continue in existence for one year from the date of the license creating it, and may take jurisdiction of any dispute between employers and workmen in any mechanical, manufacturing, mining or other industry who may sub-

## Hours of labor; wages — Ch. 73, §§ 12, 15.

mit their disputes in writing to such tribunal for decision. Vacancies occurring in the membership of the tribunal shall be filled by the judge or court that licensed said tribunal. Disputes occurring in one county may be referred to a tribunal already existing in an adjoining county. (Id.)

## Rules of board.

§ 8. The said tribunal shall have power to make, ordain and enforce rules for the government of the body when in session, to enable the business to be proceeded with in order, and to fix its sessions and adjournments, but such rules shall not conflict with this statute, nor with any of the provisions of the constitution and laws of the State; provided, that the chairman of said tribunal may convene said tribunal in extra session at the earliest day possible, in case of emergency. (Id.)

## General powers.

§ 9. All submissions of matters in dispute shall be made to the chairman of said tribunal, who shall file the same. The chairman of the tribunal shall have power to administer oaths to all witnesses who may be produced, and a majority of said tribunal may provide for the examination and investigation of books, documents and accounts necessary, material and pertaining to the matters in hearing before the tribunal, and belonging to either party to the dispute. The umpire shall have power when necessary to administer oaths and examine witnesses, and examine and investigate books, documents and accounts pertaining to the matters submitted to him for decision. (Id.)

## Submission of questions to umpire; award.

§ 10. Before the umpire shall proceed to act, the question or questions in dispute shall be plainly defined in writing signed by the members of the tribunal or a majority thereof, or by the parties submitting the same; and such writing shall contain the submission of the decision thereof to the umpire by name, and shall provide that his decision thereon after hearing shall be final; and said umpire must make his award within five days from the time the question or questions in dispute are submitted to him. Said award shall be made to the tribunal; and if the award is for a specific sum of money, said award of money, or the award of the tribunal when it shall be for a specific sum, may be made a matter of record by filing copy thereof in the district court of the county wherein the tribunal is in session. When so entered of record it shall be final and conclusive, and the proper court may on motion of any one interested enter judgment thereon; and when the award is for a specific sum of money may issue final and other process to enforce the same; provided,

that any such award may be impeached for fraud, accident or mistake. (Id.)

## Compensation; sessions, where held.

§ 11. The members of the tribunal and the umpire shall each receive as compensation for their services, out of the treasury of the county in which said dispute shall arise, two dollars for each day of actual service. The sessions of said tribunal shall be held at the county seat of the county where the petition for the same was presented; and a suitable room for the use of said tribunal shall be provided by the county commissioners. (Id.)

## Hours of labor.

§ 12. Eight hours shall constitute a day's work for all laborers, workmen, mechanics or other persons now employed or who may hereafter be employed by or on behalf of the State of Kansas, or by or on behalf of any county, city, township, or other municipality of said State, except in cases of extraordinary emergency which may arise in time of war, or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life; provided, that in all such cases the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work; provided further, that not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics and other persons so employed by or on behalf of the State of Kansas, or [by or on behalf of] any county, city, township or other municipality of said State; and laborers, workmen, mechanics, and other persons employed by contractors or subcontractors in the execution of any contract or contracts within\* the State of Kansas, or within\* any county, city, township, or other municipality thereof, shall be deemed to be employed by or on behalf of the State of Kansas, or of such county, city, township, or other municipality thereof. (L. 1891, ch. 114.)

§§ 13-14 relate to contracts by the State or a municipality.

## Weekly payment of wages.

§ 15. All private corporations doing business within this State, except all steam surface railways and except corporations engaged in the production of farm and dairy products, shall pay to their employes the wages earned each and every week in lawful money of the United States, and all such wages shall be due and payable and shall be paid by such corporation not later than Friday of each week for all such wages

\* The word "within" as here used is probably an error, and should be "with," as, "contracts with the State," etc.

## Payment of wages — L. 1899, ch. 152; ch. 73 of Stat., §§ 22-26.

earned the preceding week. (L. 1893, ch. 187, § 1.)

§ 16. Whenever such corporation fails to pay any of their employes, as provided in section one of this act, then a penalty shall attach to such corporation and become due to such employes, as follows: A sum equivalent to a penalty of five per cent. per month as liquidated damages, and such penalty shall attach and become a judgment in any court of competent jurisdiction, and the penalty shall continue in full force and effect including all the time intervening up to time of final payment. (Id., § 2.)

§ 17. Whenever any employe is discharged from the employ of any such corporation, then the wages of such employe shall become due and payable in the same manner as heretofore described in section two. (Id., § 3.)

§ 18. Any employe may recover all such penalties that may, by violations of sections two and three of this act, have accrued to him at any time within six months succeeding such default or delay in the payment of such wages. (Id., § 4.)

§ 19. Any contract or agreement made between any such corporation and any parties in its employ, whose provisions shall be in violation, evasion or circumvention of this act, shall be unlawful and void in its effects as to such corporations. (Id., § 5.)

§ 20. Whenever any such corporation shall contract any or all of its work to any contractor, then it shall become the duty of such corporation to provide that the employes of such corporation or contractor shall be paid according to the provisions of this act, and such corporation shall become responsible and liable to the employes of such contractor in the same manner as if said employes were employed by such corporation. (Id., § 6.)

§ 21. Whenever it shall become necessary for employes to enter or maintain a suit at law for the recovery or collection of wages due as provided by this act, then such judgment shall include a reasonable attorney fee, to be taxed as a part of the costs in the case, and collected under the same provisions of law as such judgment. (Id., § 7.)

#### **Wages for labor, how paid.**

§ 21a. Any time-check, due-bill, order, or orders for merchandise, issued by any person, firm or corporation to any person in their or its employ in payment of wages for labor, shall be dated at the time of its issuance, and, after fifteen days from the date of issuance, shall, at the option of the holder thereof, be payable by the maker in lawful money of the United States; provided, that nothing in this act shall be construed to repeal any law now on the statute-book. (L. 1899, ch. 152, § 1.)

§ 21b. In the event of the maker of any time-check, due-bill or orders for merchandise issued in payment of wages for labor shall refuse to redeem and pay the same in

lawful money of the United States, and the holder thereof brings an action to recover thereon, said maker shall be liable for double the amount of said time-check, due-bill or order for merchandise to the holder thereof, together with a reasonable attorney fee, to be recovered in such action. (Id., § 2.)

§ 22. It shall be unlawful for any person, firm, company, corporation, or trust, or the agent, or the business manager of any such person, firm, company, corporation or trust to sell, give, deliver, or in any way directly or indirectly to any person employed by him or it, in payment of wages due or to become due, any scrip, token, check, draft, order, credit on any book of account, or other evidence of indebtedness, payable to bearer or his assignee, otherwise than at the date of issue, but such wages shall be paid only in lawful money of the United States, or by check or draft drawn upon some bank in which any person, firm, company, corporation or trust, or the agent or the business manager of any such person, firm, company, corporation or trust, has money upon deposit to cash the same. (L. 1897, ch. 145, § 1.)

[Act is constitutional. Haun v. State, Ct. of App. of Kan., 54 Pac. Rep. 130 (1898). Applies to corporations and trusts that employ ten or more persons. Id.]

§ 23. All contracts to pay or accept wages in any other than lawful money, or by check or draft, as specified in section one of this act, and any private agreement or secret understanding that wages shall be or may be paid in other than lawful money, or by such check or draft, shall be void, and the procurement of such private agreement or secret understanding shall be unlawful, and construed as coercion on the part of the employer. (Id., § 2.)

§ 24. If any person shall violate any of the provisions of either section one or two of this act, or shall compel, or in any manner attempt to compel, or coerce any employe of any corporation or trust to purchase goods or supplies from any particular person, firm, corporation, company or trust, or at any particular store or place, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty or more than ninety days, or by both such fine and imprisonment for each violation. (Id., § 3.)

§ 25. This act shall apply only to corporations or trusts or their agents, lessees or business managers, that employ ten or more persons. (Id., § 4.)

§ 26. The county attorney of any county upon complaint made to him shall proceed to prosecute the violators of this act as prescribed in other cases of misdemeanor. (Id., § 5.)

## Trade unions; detectives; blacklisting; trade-marks — Ch. 73, §§ 30-40.

**Labor day.**

§ 27. The first Monday of September of each year shall be known as labor day, and the same is hereby declared to be a legal holiday.

**Discrimination against labor organizations.**

§ 30. It shall be unlawful for any person, company, or corporation, or the agent, officer, manager, superintendent, master mechanic, or foreman of any person, company, or corporation, to prevent employees from joining and belonging to any labor organization, and any such person, company, or corporation, or any agent, manager, superintendent, master mechanic, or other officer of any person, company, or corporation that coerces or attempts to coerce employees by discharging or threatening to discharge said employees because of their connection with such labor organization, shall be deemed guilty of misdemeanor and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars. (L. 1897, ch. 120, § 1.)

§ 31. Any person, company, or corporation doing any of the acts prohibited by section one of this act, shall be liable to the person injured, in exemplary or punitive damages not to exceed two thousand dollars, to be recovered by civil action, and in addition thereto a reasonable attorney fee to be recovered in said civil action for damages. (Id., § 2.)

**Detectives to be residents of Kansas.**

§ 32. No sheriff of a county, mayor of a city, or other private persons authorized by law to appoint special deputies, marshals or policemen in this State, to preserve the public peace and prevent and quell public disturbances, shall hereafter appoint as such special deputies, marshals or policemen any person who is not a resident of this State. (L. 1897, ch. 124, § 1.)

§ 33. It shall be unlawful for any person, company or association or corporation to bring or import into this State any person or persons or association of persons for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, policemen, constables or peace officers in the protection or preservation of public or private property, or in the punishment of any person violating the criminal laws of this State. (Id., § 2.)

§ 34. Any person or persons who shall in this State, without the authority, exercise or attempt to exercise the functions of or hold himself or themselves out to any as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment for a period of not less than three months nor more than one year. (Id., § 3.)

§ 35. Any person, company or corporation guilty of violating any of the provisions of said section two of this act shall be liable to a penalty of ten thousand dollars, to be recovered in the name of the State, for the use of the school fund of the county where such private armed detective forces were used by such corporation or persons; and the person, officer or agent employing such private detectives shall be guilty of felony, and on conviction thereof shall be punished by imprisonment at hard labor not exceeding five years and not less than one year, and every day that private armed detective forces are employed or used shall be considered a separate and distinct offense: Provided, however, That nothing contained in this act shall prevent the governor of this State from appointing a citizen of another State to serve a warrant issued on a requisition from the governor of another State. (Id., § 4.)

**Blacklisting prohibited.**

§ 36. Any employer of labor in this State, after having discharged any person from his service, shall not prevent or attempt to prevent by word, sign or writing of any kind whatsoever, any such discharged employee from obtaining employment from any other person, company or corporation except by furnishing, in writing, on request, the cause of such discharge. (L. 1897, ch. 144, § 1.)

§ 37. Any employer of labor in this State shall, upon the request of a discharged employee, furnish, in writing, the true cause or reason for such discharge. (Id., § 2.)

§ 38. Any employer of labor, his agent or employee who shall violate the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction, be fined for each offense the sum of one hundred dollars and thirty days imprisonment in the county jail. (Id., § 3.)

§ 39. Any person, firm, or corporation, found guilty of the violation of sections one and two of this act, shall be liable to the party injured to an amount equal to three times the sum he may be injured, and such employers of labor shall also be liable for a reasonable attorney fee which shall be taxed as part of the costs in the case. (Id., § 4.)

**Trade-marks, and labels, of workingmen.**

§ 40. Whenever any association or union of workingmen have adopted or shall hereafter adopt for their protection any label, trade-mark, or form of advertisement, announcing that goods to which (such) label, trade-mark or form of advertisement shall be attached were manufactured by a member or members of such association or union, it shall be unlawful for any person or corporation to counterfeit or imitate such label, trade-mark or form of advertisement. Every person violating this section shall

upon conviction be punished by imprisonment in the county jail for not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both fine and imprisonment. (L. 1891, ch. 213, § 1.)

§ 41. Every person who shall use any counterfeit or imitation of any label, trade-mark or form of advertisement of any such union or association, knowing the same to be counterfeit or imitation, shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term of not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. (Id., § 2.)

§ 42. Every such association or union that has heretofore adopted or shall hereafter adopt a label, trade-mark or form of advertisement as aforesaid may file the same for record in the office of the secretary of State by leaving two copies, counterparts or facsimiles thereof with the secretary of State. Said secretary shall deliver to such association or union so filing the same a duly attested certificate of the record of the same, for which he shall receive a fee of one dollar. Such certificate of record shall, in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trade-mark, or form of advertisement, and of the right of said union or association to adopt the same. (Id., § 3.)

§ 43. Every such association or union adopting a label, trade-mark, or form of advertisement as aforesaid may proceed by suit to enjoin the manufacture, use, display, or sale of any such counterfeits or imitations; and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the complainant in such suit such damages resulting from such wrongful manufacture, use, display or sale as may by said court be deemed just and reasonable, and shall require the defendants to pay to such association or union the profits derived from such wrongful manufacture, use, display or sale; and the said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant to be destroyed. (Id., § 4.)

§ 44. Every person who shall use or display the genuine label, trade-mark or form of advertisement of any such association or union in any manner not authorized by such association or union shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine of not less than one hundred dollars, or both. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or

member of such association or union on behalf of and for the use of such association or union. (Id., § 5.)

§ 45. Any person or persons who shall in any way use the name or seal of any such association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to do so use the same, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail of not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. (Id., § 6.)

## CHAPTER LXXIV.

### Of the Insurance Department.

Corporation may be member of mutual fire company.

§ 133. Any public corporation, quasi-public corporation, or private corporation of the State of Kansas has power to be a member of a mutual fire insurance company and vote as such member and to execute premium notes for its insurance. (L. 1897, ch. 121.)

§ 134. Any corporation or quasi-corporation may vote by any one of its officers at the annual meetings of mutual fire insurance companies of which it is a member. (Id.)

## CHAPTER XCV.

### Code of Civil Procedure.

- Sec. 45. Where action against corporation to be brought.
- 46. Action against railroad, etc., corporation, where brought.
- 47. Id., against turnpike company.
- 48. Action against foreign corporation, where brought.
- 49. Service of summons on corporation.
- 50. Id., on foreign corporation.
- 51. Id., on insurance company.
- 52. Designation by railroad and stage company of person on whom to serve summons.
- 53. Service of process where person is not designated.
- 54. Manner of serving personally.
- 55. Service by publication.
- 56. Verification.
- 57. Grounds of attachment.
- 58. Answer of corporation summoned as garnishee.
- 59. Appointment of receivers.

### Where action against corporation to be brought.

§ 45. An action, other than one of those mentioned in the first three sections of this article, against a corporation created by the laws of this State or of the Territory of Kansas, may be brought in the county in which it is situated, or has its principal office or place of business, or in which any of the principal officers thereof may reside, or may be summoned; but if such corporation be an insurance company, the action may be brought in the county where the cause of

## Actions; service of summons — Ch. 95, §§ 46-68.

action, or some part thereof, arose. But the provisions of this article shall not apply in the case of any corporation created by a law of this State or the Territory of Kansas, whose charter prescribes the place where, alone, a suit against such corporation may be brought. (Civil Code, §§ 49, 52.)

See ch. 66, § 13, subd. 2, cross-references.

**Action against railroad, etc., corporation, where brought.**

§ 46. An action against a railroad company, or an owner of a line of mail stages or other coaches, for any injury to persons or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which said road or line passes. (Civil Code, § 50.)

[An action may be brought against a foreign railroad corporation in any county of this State where it runs its trains and receives and lands its passengers, for any injury to persons or property upon its road. Ry. Co. v. Kanaley, 39 Kan. 1; s. c., 17 Pac. Rep. 324.]

**Id.; against turnpike company.**

§ 47. An action, other than one of those mentioned in the first three sections of this article,\* against a turnpike road company, may be brought in any county in which any part of the road lies. (Civil Code, § 51.)

**Action against foreign corporation, when brought.**

§ 48. An action, other than one of those mentioned in the first three sections\* of this article, against a non-resident of this State or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose. (Civil Code, § 53.)

[If a non-resident corporation appears and submits its case to the court, it is too late to question want of jurisdiction. R. R. Co. v. Akers, 4 Kan. 470.]

**Service of summons on corporation.**

§ 65. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors, or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof. (Civil Code, § 68.)

See ch. 103, § 34.

[Where a summons served on a corporation by a wrong name, and the corporation fails to appear

and plead the misnomer and suffers judgment to be taken, it is concluded, and in all future litigation may be connected with the action in all proper averments, and when such averments are made and proved, such corporation is affected as though it were properly named therein. Hoffeld v. Board, 33 Kan. 644; s. c., 7 Pac. Rep. 216.

When the summons is served on the secretary, return should state that president or other officer was absent from the county, or could not be found. Town Co. v. Rucker, McC. 147.

Service of summons on a person who keeps books for a corporation, but who is not its secretary or clerk, or any other officer or agent upon whom a legal service may be made, is not a valid service upon the corporation. Chambers v. Bridge Co., 16 Kan. 270.

In the absence of the president of a corporation, the vice-president should act, and a delivery of a summons to him is sufficient service. Pond v. National Mortgage Co., 6 Kan. App. 718; 50 Pac. Rep. 973 (1897).]

**Id.; on foreign corporation.**

§ 66. Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent. (Civil Code, § 70.)

See ch. 103, § 36.

[A corporation for jurisdictional purposes is to be treated as a citizen of the State by whose laws it was created, even though it has no business office in, and none of its officers are in such State. Pac. R. R. Co. v. M. P. Ry. Co., 5 McC. 373.]

**Id.; on insurance company.**

§ 67. Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. (Civil Code, § 69.)

See ch. 103, § 35.

**Designation by railroad and stage company of person on whom to serve summons.**

§ 68. Every railroad company or corporation, and every stage company doing business in the State of Kansas, or having agents doing business therein for such corporation or company, is hereby required to designate some person residing in each county, into which its railroad line or stage route may or does run, or in which its business is transacted, on whom all process and notices issued by any court of record or justices of the peace of such county may be served. In every case such railroad company or corporation, and stage company, shall file a certificate of the appointment and designation of such person, in the office of the clerk of the district court of the county in which such person resides; and the service of any process upon the person so designated, in any civil action, shall be deemed and held to be as effectual and complete as if service of such process were made upon the president, or other chief officer of such corporation or stage company. Any railroad company, corporation, or stage company, may revoke the appointment and designa-

\*Actions relating to realty and local actions.

Service; verification; attachment — Ch. 95, §§ 69-73, 110, 190.

tion of such person upon whom process may be served, as hereinbefore provided, by appointing any other person qualified as above specified, and filing a certificate of such appointment, as aforesaid; but every second or subsequent appointment shall also designate the person whose place is filled by such appointment. (L. 1871, ch. 123, §§ 1, 2.)

[The service of a summons against a railroad company upon a section foreman, as "a local superintendent of repairs," where it appears that the company has not designated any person upon whom service could be made, under the provisions of section 68 of the Civil Code, is a valid service upon the company. Ry. Co. v. De Ford, 38 Kan. 299; s. c., 16 Pac. Rep. 442.

Summons; copy delivered "to D. W. M., agent of said Ry. Co., Manhattan, Kas." does not show that said M. was president or chairman of the board of directors, or other chief officer, cashier, clerk or managing agent, and is not good. Ry. Co. v. Pillsbury, 29 Kan. 653.]

#### Service of process, where person is not designated.

§ 69. If any railroad or stage company, or corporation, fail to designate and appoint such person, as in the preceding sections is provided and required, such process may be served on any local superintendent of repairs, freight agent, agent to sell tickets, or station keeper, of such company or corporation in such county, or such process may be served by leaving a copy thereof, certified by the officer to whom the same is directed, to be a true copy, at any depot or station of such company or corporation, in such county, with some person in charge thereof, or in the employ of such company or corporation, and such service shall be held and deemed complete and effectual. (Id., § 3.)

[The railway company having designated no person in the county upon whom summons may be served, such service may be made by the sheriff leaving a copy thereof with the person in charge of the depot, and it is not necessary to specify in express terms that the road runs into that county or that company transacts its business therein. Ry. Co. v. Crowe, 9 Kan. 496.

Where a railroad company has not designated any person upon whom service of summons should be made, it may be made upon its section foreman, as "a local superintendent of repairs." R. R. Co. v. De Ford, 38 Kan. 299; s. c., 16 Pac. Rep. 442.]

#### Manner of serving personally.

§ 70. In all cases where service of any process cannot be had upon the person designated by such company or corporation personally, service may be made by leaving a certified copy of such process at the usual place of residence of such person, or as in the last preceding section, and the same shall be deemed complete and effectual. (Id., § 4.)

#### Service by publication.

§ 72. Service may be made by publication in either of the following cases: In \* \* \* actions brought against a non-resident of the State, or a foreign corporation, having in this State property or debts owing them, sought to be taken by any of the pro-

visional remedies, or to be appropriated in any way; in actions which relate to, or the subject of which is, real or personal property in this State, where any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the State or a foreign corporation; \* \* \* (L. 1889, ch. 107, § 1.)

[Suit being instituted against a foreign corporation, and its treasurer garnished; no funds of said corporation being found in his hands within this State the court acquires no jurisdiction. Wheat v. Ry. Co., 4 Kan. 370.]

*Id.*

§ 73. (As amended March 10, 1891.) Before service can be made by publication, an affidavit must be filed stating that the defendant or defendants are non-residents of the State of Kansas, and that personal service of summons cannot be had upon said defendant or defendants within the State of Kansas, or that the plaintiff, with due diligence, is unable to make personal service of summons upon the defendant or defendants to be served by publication within the State, and showing that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication. This act shall apply to domestic corporations which have not been legally dissolved in cases where the officers thereof have departed from the State or cannot be found. (Civil Code, § 73.)

[All that such an affidavit is required to show is, that personal service cannot be made on the defendant within the State, and that the action is one in which service by publication may be had. Gillespie v. Thomas, 23 Kan. 139.]

#### Verification.

§ 110. \* \* \* When a municipal or other corporation is a party, the verification may be made by an officer thereof, its agent or attorney. (Civil Code, § 110.)

#### Grounds of attachment.

§ 190. The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

First. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this State; (but no order of attachment shall be issued on the ground or grounds in this clause stated for any claim other than a debt or demand arising upon contract, judgment or decree, unless the cause of action arose wholly within the limits of this State, which fact must be established on the trial;) \* \* \* (Civil Code, § 190.)

See ch. 103, § 54, as to attachments before justices.

**Answer; receivers; quo warranto — Ch. 95, §§ 236, 264; ch. 96, §§ 97, 98.**

**Answer of corporation summoned as garnishee.**

§ 236. The answer of a corporation summoned as a garnishee may be made by any officer thereof; and of any other garnishee, by any agent or attorney, in his behalf, who shall be acquainted with the facts. (L. 1889, ch. 151, § 10.)

**Appointment of receivers.**

§ 264. A receiver may be appointed by the supreme court, the district court, or any judge of either, or, in the absence of said judges from the county, by the probate judge: First, in an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured. Second, in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt. Third, after judgment, to carry the judgment into effect. Fourth, after judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment. Fifth, in the cases provided in this code, and by special statutes, when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights. Sixth, in all other cases where receivers have heretofore been appointed by the usages of the courts of equity. Seventh, in all cases instituted in the district court in the name of the State of Kansas, or in the name of the board of county commissioners of any county, or of any city, township, or municipality, for the collection of any delinquent tax, against any person, firm, corporation or owner maintaining or operating any toll-bridge over any stream or river, the center of the channel of which forms the boundary line between this and any other State the court, on application of the plaintiff, may appoint a receiver of the property, real estate or personal, of the defendant alleged to be chargeable with the payment of such delinquent tax, and such receiver shall hold, possess, manage and control all such property under the orders of the court until the termination of the lit-

igation relative to such tax. (Code, § 254, as amended by L. 1898, ch. 9; approved January 6, 1899.)

See ch. 66, § 47.

[Under fifth subdivision of above section, a receiver may be appointed at suit of a stockholder, where corporate affairs have been so mismanaged that it has become insolvent, and it appears that all the officers and directors have conspired to divert its business to another company, distribute its funds, and fraudulently apply its assets to their individual benefit. *In re Lewis*, 52 Kan. 660; s. c., 35 Pac. Rep. 287.]

## CHAPTER XCVI.

**Actions or Proceedings in Particular Cases.**

- Sec. 97. Writ of quo warranto abolished.
- 98. Former remedies to be by civil action.
- 99. Actions, how brought.
- 103. Judgment, exclusion from corporate rights.
- 104. Costs.

**Writ of quo warranto abolished.**

§ 97. The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished, and the remedies heretofore obtainable in those forms may be had by civil action. (Gen. Stat. 1868, ch. 80, § 652.)

**Former remedies to be by civil action.**

§ 98. Such action may be brought in the supreme court or in the district court, in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within this State, or any office in any corporation created by authority of this State;

Second. Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

Third. When any association or number of persons shall act within this State as a corporation without being legally incorporated;

Fourth. When any corporation do or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or when any corporation abuses its power or exercises powers not conferred by law;

Fifth. Where any corporation claims, by virtue of a congressional grant, any of the public lands or Indian lands to which the Indian title or right of occupancy has been extinguished;

Sixth. For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto. (Id., § 653.)

[Judgment of dissolution can probably be rendered only in an action in the nature of a quo warranto, but it may be rendered in any case for a long-continued, wilful and persistent misuser or non-user of corporate franchises. *State v. Pipher*, 28 Kan. 131.

Crimes; forgery; riots — Ch. 100, §§ 164, 316-318, 390.

The State may proceed by civil action in quo warranto against any corporation created under the laws of the State which, without authority, assumes to carry on the business of insurance. *State v. Ins. Co.*, 30 Kan. 585; s. c., 2 Pac. Rep. 840.]

#### **Actions, how brought.**

§ 99. When the action is brought by the attorney-general or the county attorney of any county of his own motion, or when directed to do so by competent authority, it shall be prosecuted in the name of the State, but where the action is brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction, and at the expense of such person; \* \* \* (Id., § 654.)

[In mandamus or quo warranto, an individual person can no longer sue in the name of the State, but must prosecute his action in his own name. *Crowell v. Ward*, 16 Kan. 61.]

#### **Judgment; exclusion from corporate rights.**

§ 103. When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the action, have a separate action for the damages at any time within one year after the judgment. The court may give judgment of ouster against the defendant, and exclude him from the office, franchise or corporate rights; and in case of corporations, that the same shall be dissolved. (Id., § 658.)

#### **Costs.**

§ 104. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and persons entitled. (Id., § 659.)

### **CHAPTER C.**

#### **Crimes and Punishments.**

Sec. 164. Forging notes, etc., of corporation. 316-318. Riots.  
390. Definition of terms used in chapter. 408-410. Obstructing business of corporation.  
421-422. Altering trade-marks.

#### **Forging notes, etc., of corporation.**

§ 164. The false making, forging or counterfeiting of any evidence of debt or negotiable instrument, issued or purporting to have been issued by any corporation having authority for that purpose, to which shall be fixed the pretended signature of any person as an agent or officer of such corpo-

ration, shall be deemed a forgery, in the same degree and in the same manner as if such person was at the time an officer or agent of such corporation, notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

See ch. 66, § 18.

#### **Riots.**

§ 316. If three or more persons shall assemble together with intent to do any unlawful act with force and violence against the person or property of another, or to do any unlawful act against the peace, or being lawfully assembled shall agree with each other to do any unlawful act aforesaid (and) shall make any movement or preparation therefor, the persons (and each of them) so offending on conviction thereof shall be fined in the sum not exceeding two hundred dollars. (Gen. Stat. 1868, ch. 31, § 268.)

#### **Id.**

§ 317. When three or more persons shall be assembled aforesaid and proceed to commit any of the offenses in the preceding section mentioned, it shall be the duty of any judge, justice of the peace, sheriff, constable, marshal or other peace officer, immediately upon actual view, or as soon as may be on information, to make proclamation in the hearing of such offenders, commanding them in the name of the State of Kansas to disperse and to depart to their several homes or lawful employments; and if upon such proclamation such persons shall not disperse and depart as aforesaid, it shall be the duty of such judge, justice of the peace, sheriff, constable, marshal or other peace officer to call upon persons near, and if necessary throughout the county, to aid and assist in dispersing and taking into custody all persons assembled as aforesaid; and all persons called on aforesaid and refusing to render immediate assistance shall each, upon conviction thereof, be fined in any sum not exceeding one hundred dollars. (Id., § 269.)

#### **Id.**

§ 318. Every person who shall wilfully disturb the peace and quiet of any person, family or neighborhood, shall upon conviction thereof be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months. (Id., § 253.)

#### **Terms used in chapter.**

§ 390. When the term "person" is used in this act to designate the party whose property may be the subject of any offense, such term shall be construed to include \* \* \* any \* \* \* private corporation, which may lawfully own any property within

## Obstructing business; trade-marks — Ch. 100, §§ 408-410, 421, 422.

this State, as well as individuals. (Gen. Stat. 1868, ch. 31, § 314.)

"Corporation" defined. Ch. 66, §§ 1-2. Const., art. XII, § 6.

**Obstructing business of corporation.**

§ 408. If any person or persons shall wilfully and maliciously, by any act or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company, or other corporation, firm or individual in this State, or of the regular running of any locomotive engine, freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by a fine of not less than twenty dollars, nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days. (L. 1879, ch. 134, § 2.)

**Id.**

§ 409. If two or more persons shall wilfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company, or any other corporation, firm or individual in this State, or to obstruct, hinder, or impede, except by due process of law, the regular running of any locomotive engine, freight or passenger train on any railroad, or the labor or business of any such corporation, firm or individual, such persons shall on conviction thereof be punished by fine not less than twenty dollars, nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days. (Id., § 3.)

**Id.**

§ 410. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company, or such other corporation, firm or individual, whether by concert of action or otherwise, except as is provided in section one of this act. (Id., § 4.)

**Altering trade-marks.**

§ 421. If any person or persons shall wilfully change, alter, deface, destroy, counterfeit, cut out or dispose of any trade-mark, brand, impression or device used by a person, company or corporation within this State to designate a particular description of goods, wares, merchandise, cask, barrel, half-barrel, keg, bottle, package, or the contents thereof, he or they shall forfeit and pay to the owner or owners thereof for each offense not exceeding the sum of twenty-five dollars, to be recovered in any court proper to try the same, or before a

justice of the peace having jurisdiction of the same. (Gen. Stat. of 1868, ch. 111.)

**Id.**

§ 422. If any person shall change, shift and place any brand, mark or device used or intended to be used for the purpose aforesaid to or upon any piece of goods, wares, merchandise, cask, barrel, half-barrel, keg, bottle or package, or shall intermix, take out, change or shift any article, liquid or commodity whatever into a branded cask, barrel, half-barrel, keg, bottle, or package, and thereby avail him or themselves of another person or person's brand, mark or device, he or they shall forfeit for every such offense the sum of twenty-five dollars, to be recovered as aforesaid. (Id.)

**CHAPTER CII.****Code of Criminal Procedure.****Existence of corporation, how proved.**

§ 222. If, on trial or other proceeding in a criminal cause, the existence, constitution, or powers of any banking company or corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the State, government or country by which such corporation was created. (Criminal Code, § 214.)

Proof of corporate existence. Ch. 66, § 11.

[In the trial of a criminal case, the de facto existence of a corporation is all that is necessary to be shown; and existence of a railroad corporation may be proved by general reputation. *State v. Thompson*, 23 Kan. 338.]

**CHAPTER CIII.****Justices of the Peace.**

- Sec. 34. Service of summons on corporation.
- 35. On insurance company.
- 36. On railroad company.
- 54. Attachment.
- 143. Trial; denial of corporate existence.

**Service of summons on corporation.**

§ 34. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation, with the person having charge thereof. (Gen. Stat. 1868, ch. 81, § 13.)

[A service of summons upon a corporation which does not show that person served was either president, chairman of board of directors, or other chief officer, clerk or managing agent, is not good. *R. R. Co. v. Pillsbury*, 29 Kan. 653.]

Justice courts — Ch. 103, §§ 35, 36, 54, 143.

**On insurance company.**

§ 35. When the defendant is an incorporated insurance company, and the action is brought in the county in which there is an agency thereof, the service may be upon the chief officer of such agency. (Id., § 14.)

**On railroad company.**

§ 36. When the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent. (Id., § 15.)

**Attachment.**

§ 54. The plaintiff in a civil action (before a justice of the peace) for the recovery of money may, at or after the commencement thereof (when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just, the amount which the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following particulars), have an attachment against the property of the defendant, and upon the grounds herein stated;

First. When the defendant or one of several defendants is a foreign corporation or non-resident of this State; (but no attachment shall be granted on the ground or grounds in this clause stated, for any claim other than a debt or demand arising upon contract, judgment or decree, unless the cause of action arose wholly within the limits of this State, which fact must be established on the trial); \* \* \* (Id., § 28.)

**Trial; denial of corporate existence.**

§ 143. In all actions, allegations \* \* \* of the existence of a corporation \* \* \* shall be taken as true unless the denial of the same be verified by the affidavit of the opposite party, his agent or attorney. (L. 1886, ch. 60, § 1.)

**Proof of corporate existence.** Ch. 66, § 11.

In a justice's court the existence of a corporation may be put in issue by the defendant without a denial under oath, or even a written denial of any kind. *Stanley v. Bank*, 17 Kan. 592.

It was sufficiently shown, in case at bar, that the National Bank of Springfield, Ohio, was a corporation. *Mann v. Bank*, 34 Kan. 746; s. c., 10 Pac. Rep. 150.

When the answer denying the allegation of corporate existence is verified, it must be proved upon the trial; and it is error, with such an answer in the case, to render judgment against the corporation without any proof of its corporate existence. *Jones v. Ross*, 48 Kan. 474; s. c., 29 Pac. Rep. 680.]

**CHAPTER CXVII.**

**Of Conveyances of Real Estate.**

**Deed executed by private corporation.**

§ 31. All deeds, contracts, and conveyances executed and acknowledged by private corporations, under and pursuant to section

four of chapter twenty-two of the general statutes of eighteen hundred and sixty-eight, be and the same are hereby ratified and confirmed; and all instruments of writing, executed and acknowledged under and pursuant to said section, now copied into the proper books of the office of the registers of deeds of the several counties of this State, shall, upon the passage of this act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons, notice of all deeds, mortgages, powers of attorney, conveyances, contracts, and other instruments of writing, so far as, and to the extent that the same may be found recorded, copied, or noted in such books of records, notwithstanding any defect in the execution, acknowledgment, recording, or certificate of recording the same; and the record of such instrument, or a duly authenticated copy thereof, shall be competent evidence whenever it shall be made to appear by the party's own oath or otherwise, the original is shown to be lost, or not in the possession or under the control of the party wishing to use the same: Provided, That nothing herein contained shall be construed to affect any rights heretofore acquired by subsequent grantees, assignees, or incumbrancers. (L. 1887, ch. 115, § 1.)

Power to convey realty. Ch. 66, § 13, subd. 4.

[A corporation can only convey real property in the manner prescribed by the statute. *Allen v. Brown*, 6 Kan. App. 704; 50 Pac. Rep. 505.]

**CHAPTER CXLV.**

**Unlawful Trusts and Combinations**

Sec.	1. Pooling. 2. Penalty. 3. Criminal liability. 4. Trusts and combinations. 5. Corporations. 6. All persons. 7. Persons injured. 8. Actions; defenses. 9. Violation. 10. County attorney's duty. 11. Duty of attorney-general. 12. Sheriff's duty. 13. District courts' duty. 14. Trust defined. 15. Formation prohibited. 16. Corporation forfeits charter. 17. Actions against corporations violating act. 18. Trusts not to do business within State. 19. Misdemeanors. 20. Contracts void. 21. Damages. 22. Duty of attorney general. 23. Duty of district courts. 24. Effect of act. 24a. Certain combinations illegal. 24b. Combinations to monopolize business. 24c. Requiring warehouse receipts. 24d. Duty of courts. 24e. Damages.
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**Pooling.**

Section 1. It shall be unlawful for any grain dealer or grain dealers, partnership company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association,

## Trusts and pools — Ch. 145, §§ 1-4.

to enter into any agreement, contract or combination with any other grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnerships, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever; and in case of any agreement, contract or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense. (L. 1889, ch. 175, § 1.)

**Penalty.**

§ 2. In case any grain dealer or dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall be liable to the person or persons injured thereby, to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney-fee, to be fixed by the court in every case of recovery, which attorney-fee shall be taxed and collected as a part of the costs in the case; and in any such action brought for the recovery of damages the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employe, or clerk of them or either of them, defendant in such suit, to attend, appear and testify in such case, and

may compel the production of the books and papers of such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association party to such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding. (Id., § 2.)

**Criminal liability.**

§ 3. Any grain dealer or grain dealers, partnership, company, or corporation or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director, officer, or any receiver, trustee, clerk, or lessee or agent, or person acting for or employed by them, or either of them, who alone or with any other partnership, company, corporation, association, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding six months, or both, in the discretion of the court; and shall moreover be liable to the suit of the party injured or damaged. (Id., § 3.)

**Trusts and combinations.**

§ 4. All arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this State, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorney's or doctor's fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or cost to producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful, and void. (L. 1889, ch. 257, § 1.)

**Corporations.**

§ 5. It shall not be lawful for any corporation to issue or to own trust certificates, other than the regularly and lawfully authorized stock thereof, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict or diminish the manufacture or output of any such article. (Id., § 2.)

**All persons.**

§ 6. All persons entering into any such arrangement, contract, agreement, trust, or combination, or who shall, after the passage of this act, attempt to carry out or act under any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than six months, or to both such fine and imprisonment, in the discretion of the court. (Id., § 3.)

**Persons injured.**

§ 7. Any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination prescribed in sections one or two of this act, may sue for and recover in any court of competent jurisdiction in this State, of any person or corporation, the full consideration or sum paid by him for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed. (Id., § 4.)

**Actions; defenses.**

§ 8. When an action at law or suit in equity shall be commenced in any court of this State, it shall be lawful in the defense thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in sections one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof. (Id., § 5.)

**Violation.**

§ 9. The purchase, sale or manufacture of any goods, wares, merchandise or other commodities in this State by any person or corporation who has entered into any such arrangements, contracts, agreements, trusts or combinations in any other State or territory, as described in sections one or two of this act, for the purchase, sale or manufacture of any such articles by any agent or attorney for such person, or as an agent, officer or stock broker of any such corporation, as a trustee, committee, or in any capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties. (Id., § 6.)

**County attorney's duty.**

§ 10. It shall be the duty of the county attorneys to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten days nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office, in addition to the fine imposed as herein provided. (Id., § 7, in part.)

**Duty of attorney-general.**

§ 11. Whenever the county attorney shall be unable or shall neglect or refuse to enforce the provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney-general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, informations, petitions and papers, as the county attorney is authorized to sign, verify, or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fees that the county attorney would be entitled to for like services, to be taxed and collected in the same manner. (Id., § 7, in part.)

**Sheriff's duty.**

§ 12. It shall be the duty of all sheriffs, deputy sheriffs, constables, mayors, marshals, police judges and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witnesses within his knowledge by

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whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section he shall upon conviction be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. (Id., § 8.)

**District courts' duty.**

§ 13. It shall be the duty of the district courts to instruct the grand juries especially as to the provisions of this act. (Id., § 9.)

**Trust defined.**

§ 14. A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes: First. To create or carry out restrictions in trade or commerce or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State. Second. To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance. Third. To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. Fourth. To fix any standard or figure, whereby its price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State. Fifth. To make or enter into, or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected. And any such combinations are hereby declared to be against public policy, unlawful and void. (L. 1897, ch. 265, § 1.)

**Formation prohibited.**

§ 15. All persons, companies, or corporations, within this State are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise, in any trust as defined in section one of this act. (Id., § 2.)

**Corporation forfeits charter.**

§ 16. Any corporation holding a charter under the laws of the State of Kansas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. And any stockholder, director, officer, agent, representative or consignee of any such corporations shall be subject to the penalties herein prescribed. (Id., § 3.)

**Action against corporation violating act.**

§ 17. For a violation of any of the provisions of this act by any corporation, or any of its officers or agents mentioned herein, it shall be the duty of the attorney-general of the State, or county attorney of any county in which said violation may occur, or either of them, upon his own motion, to institute an action in any court in this State, having jurisdiction thereof, for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its corporate existence. (Id., § 4.)

**Trusts not to do business within State.**

§ 18. Every person, company or corporation within or without this State, their officers, agents, representatives or consignees, violating any of the provisions of this act, within this State, are hereby denied the right, and are hereby prohibited from doing any business within this State, and all persons, companies and corporations, their officers, agents, representatives and consignees within this State are hereby denied the right to handle the goods of, or in any manner deal with, directly or indirectly, any such person, company or corporation, their officers, agents, representatives or consignees, and it shall be the duty of the attorney-general, and the county attorney of any county in the State where any violation of this act be committed, or either of them, to enforce the provisions of this section by injunction or other proceeding; and all persons, companies and corporations, their officers, agents, representatives or consignees, violating any of the provisions of this section, either directly or indirectly, or of abetting or aiding either directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor and shall be fined, not less than one hundred dollars nor more than one thousand dollars, and confined in jail not less than thirty days, nor more than six

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months, and shall forfeit not less than one hundred dollars for each and every day such violation may continue, which may be recovered in the name of the State of Kansas in any court of competent jurisdiction. (Id., § 5.)

#### Misdemeanors.

§ 19. Each and every person, company or corporation, their officers, agents, representatives or consignees, who, either directly or indirectly, violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and shall be imprisoned not less than thirty days nor more than six months, and in addition thereto for each and every day thereafter that such violation shall be committed or continued, forfeit and pay the sum of one hundred dollars, which may be recovered in the name of the State of Kansas, in any county where the offense is committed or where either of the offenders reside, and it shall be the duty of the attorney-general of the State, or the county attorney of any county in the State, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act. (Id., § 6.)

#### Contracts void.

§ 20. Any contract or agreement in violation of any of the provisions of this act, shall be absolutely void and not enforceable in any of the courts of this State, and when any civil action shall be commenced in any court of this State, it shall be lawful to plead in the defense thereof, that the plaintiff or any other person interested in the prosecution of the case is at the time or has within one year next preceding the date of the commencement of any such action, been guilty either as principal, agent, representative, or consignee, directly or indirectly, of a violation of any of the provisions of this act, or that the cause of action grows out of any business transaction in violation of this act. (Id., § 7.)

#### Damages.

§ 21. Any person, firm, company or corporation that may be damaged by any such agreement, trusts or combinations described in sections one and two of this act, may sue for and recover in any court of competent jurisdiction in this State, of any person, company or combination, operating such trust or combination, such damages as they have sustained, together with a reasonable attorney fee. (Id., § 8.)

#### Duty of attorney-general.

§ 22. It shall be the duty of the attorney-general of the State, and the county attor-

neys in their respective counties to diligently prosecute any and all persons violating any of the provisions of this act, and it shall be the duty of all State and county officials having notice and knowledge of any violation of the provisions of this act, to notify the county attorney of their respective counties, and the attorney-general of the State, of the fact of such violation and to furnish them with the names of any witnesses by whom such violations can be proved; if any such officer or officers shall fail to comply with the provisions of this section he shall upon conviction, be fined in any sum not less than one hundred dollars nor more than one thousand dollars, and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had, shall in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. (Id., § 9.)

#### Duty of district courts.

§ 23. The several district courts of this State, and the judges thereof shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the county attorney or the attorney-general, to cause to be issued by the clerk of said court, subpoenas for such witnesses as may be named in the application of a county attorney or the attorney-general, and to cause the same to be served by the sheriff of the county where such subpoena is issued; and such witnesses shall be compelled to appear before such court, or judge, at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violations of any of the provisions of this act. And any witness who fails or refuses to attend and testify shall be punished as for contempt, as provided by law. Any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpoenaed shall be taken down by the reporter of said court and shall be transcribed and placed in the hands of the county attorney or the attorney-general, and he shall, in the proper courts, at once prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpoenaed as provided for in this section shall be compelled to attend from any county in the State. (Id., § 10.)

#### Effect of act.

§ 24. Nothing in this chapter shall be held or construed to affect any action or prosecution which is now pending under the provisions of any law now in existence in this State. (Id., § 11.)

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**Certain combinations illegal.**

§ 24a. If any person, company or corporation doing business in Kansas shall make any agreement, expressed or implied, or by any understanding or combination with any persons, company or corporation within or without the State, by which any shipper of seeds, grains, hay or live stock is defrauded out of any portion of the net weight of any consignment of grain, seeds, hay, or live stock, all such agreements or combinations are hereby declared to be in restraint of trade, and any such person, company or corporation shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the sum of not less than one hundred dollars and not exceeding one thousand dollars for each offense. (L. 1899, ch. 293, § 1.)

**Combinations to monopolize business illegal.**

§ 24b. Every person, servant, agent or employee of any firm or corporation doing business within the State of Kansas that shall conspire or combine with any other persons, firm or corporation within or without the State for the purpose of monopolizing any line of business, or shall conspire or combine for the purpose of preventing the producer of grain, seeds or live stock or hay, or the local buyer thereof, from shipping or marketing the same without the agency of any third person, firm, or corporation, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than one thousand dollars, and not to exceed five thousand dollars for each offense. Id., § 2.)

**Requiring warehouse receipts.**

§ 24c. Any person, who shall, as agent or employee of any person, firm or corporation, enter into an agreement, expressed or implied, by which it is stipulated that grain, seeds or hay shall not be shipped by the producer or local buyer unless accompanied with warehouse receipts, or that the same shall in any manner be under the control of any warehouseman or agent as a condition precedent to the marketing of said grain, all such agreements shall be deemed, and are hereby declared, unlawful, and in restraint of trade, and the person entering into such agreement or combination shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than one thousand dollars and not more than five thousand dollars, or by imprisonment in the county jail not less than ninety days and not to exceed one year, or by both such fine and imprisonment, at the discretion of the court. (Id., § 3.)

**Duty of courts.**

§ 24d. The several district courts and the supreme court of the State of Kansas are hereby vested with jurisdiction to prevent

and restrain violators of this act, and it shall be the duty of the attorney-general to enforce the provisions of this act, and such proceedings may be instituted by petition, setting forth the cause of complaint, praying relief, verifying said petition by affidavit, and the court shall grant temporary restraining orders, enjoining or prohibiting such violation till the final hearing of the case; said restraining order shall be granted without bond. (Id., § 4.)

**Damages.**

§ 24e. Any person, firm or corporation that shall be injured in business or property by any other person, firm or corporation by reason of anything declared unlawful or in restraint of trade by this act shall have a right of action against the person, firm or corporation violating the provisions of this act for threefold damages, including costs and reasonable attorney's fees. (Id., § 5.)

**CHAPTER CLVIII.****Assessment and Taxation.**

- Sec. 1. Property subject to taxation.
- 3. Personal property defined.
- 12. What property to be listed.
- 13. Money.
- 15. Listing of stocks, moneys and credits.
- 16. Deduction of debts.
- 17-21. Where listed.
- 22. Certificate of assessment.
- 27. Property listed as of March 1.
- 27a. Personal property acquired after March 1.
- 27b. Live stock, how assessed.
- 27c. Listing property brought into State after March 1.
- 27d. Lien of tax.
- 27e. Lien of tax superior.
- 27f. When tax becomes immediately payable.
- 27g. Duties of certain officers.
- 27h. Levy by county treasurer.
- 28. Capital stock of corporations.
- 46. Refusal to list.
- 54-55. Property consigned, how assessed.
- 56. Report to county clerk.
- 57. Failure, forfeiture.
- 58. Manufacturer defined.
- 59. Manufacturer, what to list.
- 60-61. Bank stock, how assessed.

**Property subject to taxation.**

Section 1. All property in this State, real and personal, not expressly exempt therefrom, shall be subject to taxation in the manner prescribed by this act. (L. 1876, ch. 34, § 1.)

**Personal property defined.**

§ 3. \* \* \* The term "personal property" shall include \* \* \* the capital stock, undivided profits, and all other assets of every company, incorporated or unincorporated, and every share or interest in such stock, profit or assets, by whatever name the same may be designated: Provided, The same is not included in other personal property subject to taxation or listed as the property of individuals; \* \* \* (Id.)

**What property to be listed.**

§ 12. Every person of full age and sound mind, accountant officer, or other person designated by any person, company or corporation, shall list all personal property subject to taxation, of which such person, company or corporation is the owner, lessee or occupant, having any interest in or exercising any control over any personal property, including all moneys in his possession or subject to his order, check or draft, and all credits due or to become due from any person, company or corporation, whether in or out of the county or State in which such person may reside or such company be located, except as herein otherwise provided.

[Where the stock in a mining corporation is assessed to the stockholders for the respective shares held by them, the assessment of the tangible property of the corporation, and the payment of the taxes delivered thereon does not relieve the stockholders from liability to pay taxes on the excess of the valuation of the entire stock over the valuation of the tangible property of the corporation. *Ryan v. Leavenworth*, 30 Kan. 185; s. c., 2 Pac. Rep. 156.]

**Money.**

§ 13. Money collected by any agent for any person, company or corporation, which is to be transmitted immediately to such person, company or corporation, shall not be listed by such agent; but such agent shall, if required by the assessor, state under oath the amount of money in his hands, and to whom the same is to be transmitted.

**Listing of stocks, moneys and credits.**

§ 15. Merchants' and manufacturers' stocks and moneys and credits shall be listed under two separate heads—merchants' and manufacturers' stock, forming one item, and moneys and credits forming another item, in the statement required to be delivered to the assessor. (L. 1876, ch. 34.)

**Deduction of debts.**

§ 16. Debts owing in good faith by any person, company or corporation may be deducted from the gross amount of credits belonging to such person, company or corporation; provided, such debts are not owing to any person, company or corporation as depositors in any bank or banking association, or with any person or firm engaged in the business of banking in this State or elsewhere; and the person, company, or corporation making out the statement of personal property to be given to the assessor claiming deductions herein provided for shall set forth both the amount and nature of his credits and the amount and nature of his debts sought to be deducted; but no person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation given to any mutual insurance company, or deferred payment or loan for a policy of life insurance, nor on account of

any unpaid subscription to any religious, literary, scientific or benevolent institution or society; provided, that in deducting debts from credits no debt shall be deducted where said debt was created by a loan on government bonds or other taxable (non-taxable) securities. (Id.)

**Where listed.**

§ 17. Every person required to list property in behalf of others shall list such property in the same township, school district or city in which such property is located; but he shall list such property separate and apart from his own, specifying the name of the person, estate, company or corporation to which the same may belong. (L. 1881, ch. 34.)

**Id.**

§ 18. All toll bridges shall be listed in the township or ward where the same are located; and if located in two wards or townships, then one-half in each of such wards or townships. (Id.)

**Id.**

§ 19. All personal property shall be listed and taxed each year in the township, school district or city in which the property was located on the first of March, but all moneys and credits not pertaining to a business located shall be listed in the township or city in which the owner resided on the first day of March. (Id.)

**Id.**

§ 20. The property of banks or bankers, brokers, insurance or other companies, and merchants, shall be listed and taxed in the county, township, city and school district where their business is usually done, and manufactures and mines in the county, township, city and school district where the manufactory or mine is located. (Id.)

**Id.**

§ 21. Animals and farming implements shall be listed and taxed where usually kept; provided, that if the owner of such animals lives outside of the limits of a city, such property shall be taxed in the township where the owner resides; but in case such animals and farming implements are temporarily outside the limits of the State, or in any unorganized county of this State, then said animals and implements shall be listed and taxed in the county, township and school district where the owner resided on the first day of March. (Id.)

**Certificate of assessment.**

§ 22. It shall be the duty of the county clerk, when required by any person having stock in charge, to give a certificate of assessment, showing the number, kind, location and value of stock assessed, and such

## Taxation — Ch. 158, § 27; L. 1899, ch. 248.

certificate shall be evidence of the legal assessment of such stock for that year; and provided, that if any county clerk shall fraudulently give to any person such certificate, or if any person shall in any manner illegally obtain any such certificate, he shall on conviction thereof be punished by a fine in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. (Id.)

**Property listed as of March 1.**

§ 27. All property shall be listed and valued as of the first day of March in the year in which the same is assessed, and the transfer or sale of any taxable personal property subsequently to the first day of March shall not authorize any person to omit the same from his list, although such list be not made until after the sale or transfer of such property; but all such property shall be listed for taxation in the same manner as if no sale or transfer thereof had been made. But where bonds of the United States have been purchased by any person during the year prior to the first day of March, where property is required to be listed as of that day, the value of such bonds in money shall be divided by twelve, and the quotient shall be multiplied by the number of months or fractional parts of months remaining after deducting the time which such bonds were owned, and such product shall be listed as money on hand on the first day of March, by the party.

**Personal property acquired after March 1.**

§ 27a. When any personal property shall be located in any county in this State after the first day of March of any year, which shall acquire an actual situs therein before the first day of September, such property is taxable therein for that year and shall be assessed and placed on the tax-roll, and the tax collected as provided by this act. (L. 1899, ch. 248, § 1.)

**Live stock, how assessed.**

§ 27b. Whenever any live stock shall be located in this State for the purpose of grazing it shall be deemed to have acquired an actual situs therein as contemplated by this act. (Id., § 2.)

**Listing property brought into State after March 1.**

§ 27c. When any person, association or corporation shall settle or organize in any county in this State, and bring personal property therein after the first day of March and prior to the first day of September in any year, it shall be the duty of the assessors to list and return such property for taxation that year, unless the owner thereof shall show to the assessors under oath, that the same property has been listed for taxa-

tion for that year in some other county in this State. If such property is brought within any county after the assessor has made his returns for that year to the county clerk, the assessor shall at once assess such property and return the same to the county clerk, and the same shall be entered by the county clerk on the tax books and collected as in other cases. The persons so assessed shall have the right, if assessed after the first Monday in June, to appear before the county clerk at any time before the taxes become due, and the county clerk shall equalize such persons' taxes, as provided by law in section 93, article 7, chapter 158, of the General Statutes of Kansas. (Id., § 3.)

**Lien of tax.**

§ 27d. If any person in this State, after his personal property is assessed and before the tax thereon is paid, shall sell all of the same to any one person, and not retain sufficient to pay the taxes thereon, the tax for that year shall be a lien upon the property so sold, and shall at once become due and payable, and the county treasurer shall at once issue a tax-warrant for the collection thereof, and the sheriff shall forthwith collect it as in other cases. The one owing such tax shall be civilly liable to any purchaser of such property for any tax he owes thereon, but the property so purchased shall be liable in the hands of the purchaser or purchasers for such tax; provided, however, if the property be sold in the ordinary course of retail trade it shall not be so liable in the hands of the purchasers. (Id., § 4.)

**Lien of tax superior.**

§ 27e. If the property of any taxpayer be so seized by legal process as not to leave sufficient amount exempt from levy and sale to pay the taxes, then the taxes on the property of such taxpayer shall at once fall due, and be paid from the proceeds of the sale of the property so taken on such process in preference to all other claims against it. (Id., § 5.)

**When tax becomes immediately payable.**

§ 27f. When any person is about to remove his property from the county, after the same has been assessed and before the taxes thereon has been paid, without leaving sufficient remaining for the payment of the taxes thereon, the tax shall at once become due and payable, which fact shall be determined by any court of competent jurisdiction, in an action brought in the name of the county against the owner or reputed owner of such property, and under judgment thereon, and enforce the same by execution, and an attachment may issue as in other cases, but without bond, and the county treasurer shall forthwith issue a tax-warrant for the collection of the same, and it shall be enforced as in other cases. (Id., § 6.)

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**Duties of certain officers.**

§ 27g. It shall be the duty of all township trustees, assessors, sheriffs, constables and city councilmen to at once inform the county attorney of the making or attempted making of sales, levy of attachments or removals provided for in this act, and it shall be the duty of the county attorney to forthwith proceed with the collection of the tax as in this act provided, when such facts become known to him in any manner. (Id., § 7.)

**Levy by county treasurer.**

§ 27h. If property subject to taxation be sold, seized, or attempted to be removed or sold, as in this act provided, before the assessor has made his return, or before the county clerk has turned over the tax-rolls for that year to the county treasurer, then, if the assessors' books be in his hands, he shall furnish the county treasurer the assessment of that person; but if the party has been assessed and the assessors' books be in the hands of the county clerk, then the county clerk shall furnish to the county treasurer the assessment of that person, and the county treasurer shall at once levy upon the property so returned to him the percentage of tax levied in that county for the previous year and collect the same as in this act provided. Should the percentage thus collected exceed the rate levied for the current year, such excess shall be returned to the person entitled thereto by the county treasurer, upon the order of the board of county commissioners. If the tax books for that year have come into the possession of the county treasurer, then, if such property be not listed therein, the county clerk shall enter the same on the tax books, and levy thereon the same percentage of tax that is levied in that county for that year, and the treasurer shall then collect the taxes so levied as in other cases. (Id., § 8.)

**Capital stock of corporations.**

§ 28. No person shall be required to include in the list of personal property any portion of the capital stock of any company or corporation which is required to be listed by such company or corporation; but all incorporated companies, except banks and banking associations, manufacturing companies and stock-yard companies, shall be required to list by their designated listing agent, in the township or city where the principal office of such company is kept, the full amount of stock paid in and remaining as capital stock, at its true value in money, and such stock shall be taxed as other personal property: Provided, That such amount of stock of such companies as may be invested in real or personal property in the State of Kansas, which at the time of listing said capital stock shall be particularly specified and given to the assessors for taxation, shall be deducted from the amount of said capital stock. (L. 1885, ch. 197.)

**Refusal to list.**

§ 46. In any case where any person, company or corporation shall refuse to make out and deliver to the assessor a statement of property as required by this act, or shall refuse to make oath to the truth of such statement or any part thereof which by this act is required to be sworn to, and in every case where any such person or designated listing agent by reason of absence or other cause shall neglect or fail to make out and deliver such statement as aforesaid, the assessor shall proceed to ascertain the number and value of each description of the several articles of personal property belonging to said person, company or corporation; also, the amount of money and credits, or merchants' and manufacturers' stock, and the aggregate value of all articles of personal property subject to taxation of which a statement shall be withheld by the person, company or corporation required to list the same; and to enable the assessor to arrive at the above facts, when necessary he is hereby authorized to examine on oath any person whom he may suppose to be possessed of the necessary information. (L. 1897, ch. 243.)

**Property consigned, how assessed.**

§ 54. Every person, company or corporation who shall own or hold, subject to his control, any personal property within this State which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him for the purpose of being so sold, shall be held to be a merchant; and when such person shall be required, according to the provisions of this act, to make and deliver to the assessor a statement of his personal property he shall include in such statement the value of the personal property appertaining to his business as a merchant; and in estimating the value of such property he shall estimate the average value of such articles of personal property which he shall have had in his possession or under his control during the year next preceding the first day of March preceding the time of making such statement, or during that portion of said year which he may have been engaged in said business.

**Id.**

§ 55. In order to arrive at the average value of such property, he shall estimate the amount on hand as nearly as may be in each month in the preceding year, or such portion thereof as he may have been engaged in such business, then add the several monthly estimates, and divide the aggregate by the number of months he may have been engaged in business. No consignee shall be required to list for taxation any property consigned to him for the mere purpose of being forwarded.

## Taxation — Ch. 158, §§ 56–61.

**Report to county clerk.**

§ 56. Every person, company or corporation, who shall commence merchandising, trading or freighting in any town, city or village in this State, after the first day of March and before the first day of November in any year and the value of whose personal property, so employed, shall not have been listed for taxation in any other county in this State, shall report, under oath, to the clerk of the county in which such person, company or corporation is engaged in business, the probable amount of the average value of personal property intended by such person, company, or corporation to be so employed; and such amount shall be entered by said clerk on the assessment-roll of the county in which such business may be carried on, and such property shall be taxed the same as if the same had been returned by the proper assessor.

**Failure; forfeiture.**

§ 57. If any person, company or corporation shall commence merchandising, trading or freighting, as designated in the foregoing section, and shall not, within one month thereafter, report in accordance with the requirements of section 16 of this act, such person, company or corporation shall forfeit and pay four per cent. on the value of the personal property by him or them so employed; and the value of such property shall be ascertained by the testimony of witnesses called by the treasurer of the county in which such business may be carried on. And the said forfeitures shall be collected by such treasurer, by a suit before any justice of the peace or court having jurisdiction thereof; and when such forfeiture shall be collected, the amount shall be distributed in the same proportion as other taxes: Provided, It shall be the duty of said treasurer to notify such merchant of the above requirement of law, at least ten days before the commencement of such suit.

**Manufacturer defined.**

§ 58. Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof, by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer, and when such company or corporation shall be required to make out a statement of other personal property for taxation, he or they shall state the average amount of all articles purchased or held for the purpose of being used in such process of manufacturing, refining or combining which he or they shall have had on hand during the year next preceding the first day of March preceding the time of making such statement, which amount shall be ascertained by estimating the amount of such property on hand in each month of the preceding year, or such portion thereof as he or they may have been engaged in such busi-

ness, then add the several monthly estimates, and divide the aggregate by the number of months he or they have been engaged in such business, and such statement shall be verified on oath, as required in other cases: Provided, That the property so listed shall not be valued or assessed at any higher rate than other property.

**Manufacturer, what to list.**

§ 59. Every manufacturer shall list the value of all engines, tools and machinery of every description, not forming part of any parcel of the real property, used or designated to be used in any process of manufacturing as defined in this act.

**Bank stock, how assessed.**

§ 60. (As amended March 19, 1891.) Stockholders in banks and banking associations and loan and investment companies organized under the laws of this State or the United States, shall be assessed and taxed on the true value of their shares of stock in the city or township where such banks, banking associations, loan or investment companies are located; and the president, cashier or other managing officer thereof, shall, under oath, return to the assessor on demand a list of the names of the stockholders and amount and value of stock held by each, together with the value of any undivided profit or surplus; and said banks, banking associations, loan and investment companies shall pay the tax assessed upon said stock and undivided profits or surplus, and shall have a lien thereon until the same is satisfied.

**Id.**

§ 61. If from any causes the taxes levied upon the stock of any banking association, loan or investment company shall not be paid by said corporation, the property of the individual stockholders shall be held liable therefor: Provided further, That if any portion of the capital stock of any bank or banking association or loan or investment company shall be invested in real estate and said corporation shall hold a title in fee simple thereto, the assessed value of said real estate shall be deducted from the original assessment of the paid-up capital stock of said corporation, and said real estate shall be assessed as other lands or lots: And provided further, That banking stock or loan and investment company stock or capital shall not be assessed at any higher rate than other property: And provided further, That the provisions of this act shall apply to all mutual fire and life insurance companies or associations having assets, accumulations, money or credits, and doing business under the laws of this State: And provided further, That such assets, money and credits, held and under the control of such mutual fire and life insurance companies or associations, shall be subject to assessment and taxation.



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KENTUCKY.

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# KENTUCKY.

(Legislature did not meet in 1899.)

## DECISIONS.

(Include 52 S. W. Rep. 792.)

### Promoters.

A corporation is, by an implied contract, liable for services rendered for the use of the corporation as are necessary to its formation, and the benefits of which are accepted by it. Farmers' Bank of Vine Grove v. Smith (Ct. of App., Ky.), 49 S. W. Rep. 810 (1899).

### Corporate powers and liabilities.

Where subscribers have purchased land and caused buildings to be erected thereon, under an agreement to form the corporation, and afterward the land and buildings are conveyed to the corporation, with full knowledge of the facts, the corporation takes subject to mechanics' liens thereon. Waddy Blue Grass Creamery Co. v. Davis-Rankin Bldg. & Mfg. Co. (Ct. of App., Ky.), 45 S. W. Rep. 895 (1898); Middleton v. Same (Ct. of App., Ky.), 45 S. W. Rep. 896 (1898).

A corporation, unless organized for the express purpose of becoming surety, has no power to do so unless the contract is to its manifest advantage. M. V. Monarch Co. v. Farmers & Drovers' Bank (Ct. of App., Ky.), 49 S. W. Rep. 317 (1899).

A corporation may not, without statutory authority, assume the debts of another corporation. Kentucky Citizens' Bldg., etc., Assn. v. Lawrence (Ct. of App., Ky.), 49 S. W. Rep. 1059 (1899).

To hold a corporation liable on its contract to pay or guarantee dividends of another corporation, the petition must set out the provisions of the charter authorizing such contract, as ordinarily such power is ultra vires. Rhorer v. Middlesboro Town & Lands Co. (Ct. of App., Ky.), 44 S. W. Rep. 448 (1898).

An agreement between all the members of a corporation, that in consideration of one member's paying the corporate indebtedness, certain property belonging to it would be transferred to him, is binding, and on tender of the corporate deed and refusal to accept it, specific performance will be decreed. White v. Boreing (Ct. of App., Ky.), 45 S. W. Rep. 242 (1898).

Under Constitution, section 190, held, that a corporation which had not accepted the

provisions of the Constitution by filing an acceptance in the office of the secretary of State, was entitled to the benefits of an act to prevent injury to property by mobs, and providing for the payment of guards out of the county levy. Cahill v. Perrine (Ct. of App., Ky.), 49 S. W. Rep. 344 (1899).

See Anno. Corp. L., Ky., p. 6, for § 190 of Constitution.

### Combinations.

Section 3915 of Kentucky Statute, prohibiting combinations "for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured articles, or property of any kind," does not apply to a combination for maintaining rates of insurance, such rates not being "property" in the above sense. Aetna Ins. Co. v. Commonwealth (Ct. of App., Ky.), 51 S. W. Rep. 624 (1899).

See Anno. Corp. L., Ky., p. 23, for § 3915, supra.

### Directors; elections; meetings; compensation; liability.

Under Constitution, section 207, requiring cumulative voting at election of directors, it is no objection to the validity of an election that stockholders did not vote their stock cumulatively, it not appearing that any stockholder claimed the right to do so. Schmidt v. Mitchell (Ct. of App., Ky.), 41 S. W. Rep. 929 (1897). The stock of a defendant may be voted by his personal representative. Id.

See Anno. Corp. L., Ky., p. 8, for Constitution, § 207.

One who holds stock as executor may be a director in a corporation. Schmidt v. Mitchell (Ct. of App., Ky.), 41 S. W. Rep. 929 (1897).

Though at an election of directors a full board was not elected, because of the ineligibility of one of the candidates voted for, the old board did not hold over, but those elected constituted the governing board, with power to fill the vacancy. Id.

Who may be directors, see Anno. Corp. L., Ky., p. 16, § 551.

## Decisions.

The records of a corporation, as kept by the secretary, are conclusive as to who were elected directors at a stockholders' meeting. White Chimney & S. C. Turnpike Road Co. v. McMahan (Ct. of App., Ky.), 50 S. W. Rep. 836 (1899).

A director is entitled to compensation for work done for the corporation outside his duties as director, where the conduct of the corporation was such as to justify his expectation that he would be paid. Louisville Bldg. Assn. v. Hegan (Ct. of App., Ky.), 49 S. W. Rep. 796 (1899); but the corporation is not bound by a contract made by the president with its secretary, both being directors, whereby the secretary was to receive certain commissions. He is only entitled to reasonable commissions. *Id.*

Proceedings at a special meeting held by a bare majority of the members of the board of directors, without notice to the other members, are void, although all those present voted in favor of the action taken, and the result would have been the same had the other members been present. Such action is not binding on the corporation unless ratified. Vaught v. Ohio Co. Fair Co. (Ct. of App., Ky.), 49 S. W. Rep. 426 (1899).

Where the directors are the persons charged with a fraudulent combination and conspiracy to appropriate to their own use the assets of the corporation, creditors and stockholders may sue them to compel them to account for assets misappropriated by them, and may have a receiver appointed, without first obtaining a judgment and return of "no property" against the corporation, or making a demand upon the directors to sue. Hodges' Admx. v. South Fork Lumber Co. (Ct. of App., Ky.), 50 S. W. Rep. 969 (1899).

## Officers.

The president and directors having, by long usage, held him out as having authority to sign obligations of the corporation, the corporation is estopped to deny his authority, notwithstanding a by-law forbidding him to do so. Trapp v. Fidelity Nat. Bk. (Ct. of App., Ky.), 41 S. W. Rep. 577 (1897).

Where the president of a corporation obtained money in the name of the corporation for his own use, from a bank of which he is an officer, with the knowledge of the bank, the bank cannot look to the corporation for the money. *Id.*

Where the entire management of the business of the corporation is intrusted to the executive officers, it is not necessary that they should have a formal meeting to authorize action to be taken by them, for executive officers do not act by resolution. Bell & Coggshall Co. v. Kentucky Glass-Works Co. (Ct. of App., Ky.), 50 S. W. Rep. 2 (1899).

The general manager of a foreign corporation may, under his general authority, pur-

chase property necessary, or at least useful, in properly conducting its business. New South Brewing & Ice Co. v. Shuck (Ct. of App., Ky.), 50 S. W. Rep. 681 (1899).

A foreign corporation which consented that the general manager of its affairs in this country might buy land as "trustee," in his name, in which name he was accustomed to transact its business, is liable for the price of the land, though he in fact acted without authority, the purchase being within the scope of his duties. Hurst v. American Assn. (Ct. of App., Ky.), 49 S. W. Rep. 800 (1899).

An officer of a corporation cannot execute a mortgage of its property, except under the authority of its board of directors. Mason & Ford Co. v. Metcalfe Mfg. Co. (Ct. of App., Ky.), 44 S. W. Rep. 629 (1898).

In a particular case, facts held to constitute a loan to an officer of a corporation and not to it. Trapp v. Fidelity Nat. Bk. (Ct. of App., Ky.), 43 S. W. Rep. 470 (1897).

## Stockholders; subscriptions; liability.

A subscription: "We, the subscribers, hereto agree to pay the above amount," followed by the express stipulation that "each stockholder shall be liable only for the amount subscribed by him," is a several contract, not joint. Waddy Blue Grass Creamery Co. v. Davis-Rankin Bldg. & Mfg. Co. (Ct. of App., Ky.), 45 S. W. Rep. 895 (1898).

A stockholder cannot escape liability on his subscription on the ground that false representations were made to him by the promoters; nor that the corporate affairs have been managed fraudulently and negligently; nor that the enterprise is not being pushed, or is unduly delayed. Oldham v. Mt. Sterling Imp. Co. (Ct. of App., Ky.), 45 S. W. Rep. 779 (1898).

Liability of stockholders. See Anno. Corp. L., Ky., p. 15, § 547.

A stockholder in an insolvent corporation, who has paid his stock subscription in full by a transfer of a tract of land, in good faith, at an agreed value, for the use of the company's business, is not liable to a creditor of the corporation who had knowledge and consented to the transaction at the time it took place, solely upon the ground that the land turned out to be of less value than was agreed upon. John R. Proctor Land Co. v. Cooke (Ct. of App., Ky.), 44 S. W. Rep. 391 (1898).

Where gas company empowered to furnish electric light, purchases all the stock of an electric light company, it was liable only as stockholder for injuries done in operating electric plant. Louisville Gas Co. v. Kaufman (Ct. of App., Ky.), 48 S. W. Rep. 434 (1898).

The acceptance of stock in lieu of any interest in land owned by the corporation, precludes stockholders from claiming the proceeds of the sale of the land over the cred-

## Decisions.

itors of the corporation. *McClintock v. Bourbon Co. Agr. Soc.* (Ct. of App., Ky.), 49 S. W. Rep. 23 (1899).

**Mortgage; debt limitation.**

The power to contract debts implies the power to mortgage the corporate property to secure them. *Bell & Coggeshall Co. v. Kentucky Glass-Works Co.* (Ct. of App., Ky.), 50 S. W. Rep. 2 (1899). Where a corporation exceeds its debt limitation, a creditor who does not know that the limit has been exceeded, and who has no reasonable ground to believe that such is the fact, may enforce the obligation of the contract against the corporation. *Id.* But the debt for the excess is void as to subsequent creditors without notice. *Id.* While persons dealing with a corporation are charged with notice of the limit of indebtedness prescribed by its articles, the record of a mortgage executed to secure a debt in excess of such limit is not constructive notice to subsequent creditors that the limit has been exceeded. *Id.*

**Power to mortgage.** See *Anno. Corp. L., Ky.*, p. 12, § 542, subd. 3.

A mortgage executed in the name of a corporation, by its officers, without authority from the board of directors, is void. *Bell & Coggeshall Co. v. Kentucky Glass-Works Co.* (Ct. of App., Ky.), 48 S. W. Rep. 440 (1898). A mortgage executed to secure a debt in excess of limit of indebtedness fixed by articles, is void. *Id.*

Such debt in excess of the limit cannot be enforced for the excess to the prejudice of other creditors. *Id.*

**EstoppeL**

One who deals with a corporation as such, is estopped from denying its corporate character. *Wood v. Friendship Lodge*, No. 5 (Ct. of App., Ky.), 50 S. W. Rep. 836 (1899).

One sued on a contract made with a corporation, from which he has received the benefit, is estopped to plead the disability of the corporation to make the contract. *Johnson v. Mason Lodge*, No. 33 (Ct. of App., Ky.), 51 S. W. Rep. 620 (1899).

**Creditors; assignments for benefit of.**

A creditor of an insolvent corporation may, by attachment, acquire a specific lien upon its property, which will entitle him to a preference over other unsecured creditors, as the mere fact that a corporation is insolvent does not require a pro rata distribution of its assets. *Louisville Banking Co. v. Etheridge Mfg. Co.* (Ct. of App., Ky.), 43 S. W. Rep. 169 (1897).

A fraudulent assignment for the benefit of creditors by an insolvent corporation is such a fraudulent disposition of its property as will entitle a creditor to an attachment. *Id.*

Stockholders to whom all the assets have been distributed as dividends, may be com-

elled to refund to creditors, where executions against the corporation are returned "no property found." In a particular case, bonds distributed to stockholders, held not a bonus, but a dividend. *Grant v. Southern Contract Co.* (Ct. of App., Ky.), 47 S. W. Rep. 1091 (1898).

Long acquiescence in a deed of assignment executed by the corporation, pursuant to an order of the board of directors, passed at a meeting irregularly called, amounts to ratification by the corporation and its creditors; but not as to a creditor who obtains judgment and levies execution before ratification. In this case, two days after the execution of the deed. *Vaught v. Ohio County Fair Co.* (Ct. of App., Ky.), 49 S. W. Rep. 426 (1899).

Though an assignment for the benefit of creditors was not made by any legal, authorized officer, yet as the assignee entered upon the discharge of his duties, and obtained possession and control of the property, the assignment is not absolutely void. *Bell & Coggeshall Co. v. Kentucky Glass-Works Co.* (Ct. of App., Ky.), 48 S. W. Rep. 440 (1898).

**Dissolution.**

A court of equity will not decree the dissolution of a corporation at the suit of a shareholder. *Oldham v. Mt. Sterling Imp. Co.* (Ct. of App., Ky.), 45 S. W. Rep. 779 (1898).

Where a corporation becomes the owner of all the stock of another corporation, it does not, of itself, work a dissolution of the latter corporation. *Louisville Gas Co. v. Kaufman* (Ct. of App., Ky.), 48 S. W. Rep. 434 (1898).

**Receivers.**

It is not an abuse of discretion to appoint a receiver where violent internal dissensions exist in the corporation, and two sets of officers are struggling for the right to administer the affairs of the corporation. *Schmidt v. Mitchell* (Ct. of App., Ky.), 41 S. W. Rep. 929 (1897).

**Appointment of receivers.** See *Anno. Corp. L., Ky.*, p. 22, § 616.

The mere fact that the assignee of a note executed by a corporation has obtained judgment against the assignor, does not constitute the assignor a creditor of the corporation, so as to entitle him to the appointment of a receiver. *Kelley v. Black* (Ct. of App., Ky.), 42 S. W. Rep. 738 (1897).

A foreign receiver may sue in Kentucky if resident creditors are not adversely affected thereby. *Johnston v. Rogers* (Ct. of App., Ky.), 43 S. W. Rep. 234 (1897).

**Pleading corporate existence.**

What constitutes sufficient allegation of corporate existence of branch lodge of Grand Lodge of I. O. O. F. of Kentucky, see Nich-

## Decisions.

*ols v. Bardwell Lodge*, No. 179 (Ct. of App., Ky.), 48 S. W. Rep. 1091 (1899).

Where plaintiff sues as a corporation, the objection that the petition fails to refer to the act whereby plaintiff was incorporated as required by Civil Code, section 119, subdivision 2, cannot be raised by general demurrer. *Rudd v. Deposit Bank* (Ct. of App., Ky.), 49 S. W. Rep. 207 (1899); on petition for rehearing, 49 S. W. Rep. 971.

## Service of process.

Under the provisions of Civil Code, section 51, and section 732, subdivision 33, requiring service to be made on its chief officer or agent, and enumerating such officers and agents, a return that summons was served on ..... "who was its chief agent" is not sufficient. *Youngstown Bridge Co. v. White's Admr.* (Ct. of App., Ky.), 49 S. W. Rep. 36 (1899).

See Anno. Corp. L., Ky., pp. 27 and 29.

A sheriff's return, stating the service of a summons on W., "agent and manager" of defendant, and reciting that W. was then the chief officer or agent in the county, is sufficient under Civ. Code Prac., § 51, subd. 3. *New South Brewing & Ice Co. v. Price* (Ct. of App., Ky.), 50 S. W. Rep. 963.

See Anno. Corp. L., Ky., p. 27, § 51.

Where a firm was agent for a corporation, service on one member of the firm is service on the corporation. In an action on an insurance policy, service on the agent who issued the policy, is *prima facie* sufficient, in the absence of proof of a higher officer in the county. *Kenton Ins. Co. v. Osborne* (Ct. of App., Ky.), 51 S. W. Rep. 26 (1899).

## Service on foreign corporation.

A consent filed under Kentucky Statute 631, by foreign corporation, to service of process on the insurance commissioner, includes consent to service of the summons on an indictment. *Ætna Ins. Co. v. Commonwealth* (Ct. of App., Ky.), 51 S. W. Rep. 624 (1899).

## Taxation; the franchise tax.

Constitution, section 181, does not prohibit the general assembly from providing for the valuation of property by the State board for local taxation. Statutes, section 4077, providing that every corporation shall pay a local tax on its franchises, does not violate Constitution, section 181, as the levy of the tax is left to the local authorities. *South Covington & C. St. Ry. Co. v. Town of Bellevue* (Ct. of App., Ky.), 49 S. W. Rep. 23 (1899); *Paducah St. Ry. Co. v. McCracken Co.* (Ct. of App., Ky.), id. 178 (1899). Kentucky Statutes, sections 4077-4079, apply to all corporations and are, therefore, not unconstitutional as making a discrimination. Id.

A corporation whose franchise has been assessed at its fair cash value by the State board, cannot complain of inequality because

other officers have, in violation of law, assessed property at less than its fair cash value. *Louisville Ry. Co. v. Commonwealth* (Ct. of App., Ky.), 49 S. W. Rep. 486 (1899). The statute requiring corporations to report to the auditor for the purpose of imposing on them a franchise tax, is not invalid because it applies only to corporations having some exclusive privilege. *Louisville Tobacco Warehouse Co. v. Commonwealth* (Ct. of App., Ky.), 49 S. W. Rep. 1069 (1899).

Under Constitution, section 174, a town cannot make a contract with a corporation exempting it from a tax on its franchise. *South Covington & C. St. Ry. Co. v. Town of Bellevue* (Ct. of App., Ky.), 49 S. W. Rep. 23 (1899).

The legislature may give authority to a town or city to levy a tax on the franchise of a corporation. Id.

In valuing the franchises of a corporation for taxation, the indebtedness of the corporation and the cost of operating its business are not to be deducted. *Paducah St. Ry. Co. v. McCracken Co.* (Ct. of App., Ky.), 49 S. W. Rep. 178 (1899).

The question as to how far the value of the franchise is affected by the fact that it is to exist for a limited time, is for the board of valuation and assessment, and its finding is conclusive. *Louisville Ry. Co. v. Commonwealth* (Ct. of App., Ky.), 49 S. W. Rep. 486 (1899).

In fixing the value of a franchise for assessment, it is proper to deduct the value of the tangible property assessed in the State from the value of the capital stock, and in fixing the value of the capital stock, the board may consider gross and net earnings. Id.

The fact that the statute allows no appeal from the decision of the State board, does not affect its validity. *Paducah St. Ry. Co. v. McCracken*, supra.

The valuation fixed by the State board is conclusive. Id.

Kentucky Statutes, section 4171, authorizes an action against a corporation to recover franchise taxes. *Central Ry. & Bridge Co. v. Commonwealth* (Ct. of App., Ky.), 49 S. W. Rep. 456 (1899).

See Anno. Corp. L., Ky., p. 24, for Franchise Tax Law. See id., Const., 174, p. 6.

Kentucky Statute, section 4077, imposing a franchise tax on corporations, and section 4078, requiring reports to the State auditor, apply to all corporations, whether public or private. *Louisville Tobacco Warehouse Co. v. Commonwealth* (Ct. of App., Ky.), 48 S. W. Rep. 420 (1898).

What constitutes a "franchise" discussed. Id.

See Anno. Corp. L., Ky., p. 24.

Taxes on the tangible property of corporations are payable to the sheriff, and not to the State treasurer. *Auditor Public Accounts v. Western Union Tel. Co. (Sup. Ct., Ky.)*, 46 S. W. Rep. 704 (1898).





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## LOUISIANA.

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# LOUISIANA,

(Legislature did not meet in 1890.)

## DECISIONS.

(Include 26 S. Rep. 696.)

### **De facto corporation; liability of stockholders.**

Incorporators cannot question the incorporation of a corporation it was possible to incorporate, although it may be a nullity as to third persons. *Anderson v. Thompson*, 51 La. Ann. ; 25 S. Rep. 399 (1899).

A partnership liability of stockholders does not arise even though the organization of a corporation is illegal or defective. Creditors have had notice of the limited liability and are not misled. *Sentell v. Hewett*, 50 La. Ann. 3; 22 S. Rep. 970 (1897).

### **Corporation in name only; liability.**

It appearing from the evidence that what has been given the appearance of a corporation is a corporation in name only, but under which an individual has transacted his business, debts apparently due by the corporation to third persons will be treated as debts of the individual, and debts apparently due by the corporation to the individual will be treated as debts due by himself to himself, and consequently extinguished by confusion. *Samuel Cupples Wooden-Ware Co. v. Illinois Pickling, &c., Co.*, 51 La. Ann.; 24 S. Rep. 604 (1898).

### **Corporate character.**

A corporation regularly organized does not lose its general character as such from the fact that it purchases a street railway franchise from a city through whose streets a portion of its route passes. *Orleans & J. Ry. Co. v. Jefferson L. P. Ry. Co.* (Sup. Ct. La.), 26 S. Rep. 278 (1899).

### **Implied and incidental powers.**

Implied powers in corporations are presumed to exist only to the extent that may be necessary to enable such bodies to carry out the express powers granted and to accomplish the purpose of their creation. *State ex rel. Jackson v. Newman*, 51 La. Ann.; 25 S. Rep. 408 (1899).

An incidental power may be defined to be one that is directly and immediately appro-

priate to the execution of the specific power granted, and not one that has merely some slight or remote relation to it. *Id.*

### **Directors; contracts with.**

A director or his transferee cannot enforce to the prejudice of the creditors of the corporation, a mortgage made in his favor by the corporation. *Brashear v. Alexandria Cooperage Co.*, 50 La. Ann. 587; 23 S. Rep. 540 (1898).

### **Stockholders; estoppel; liability.**

All the stockholders having executed a full and complete ratification of an adjudication at public auction, the same relieves the sale of all alleged illegalities in the proceedings leading up to the same. *Robinson Mineral Spring Co. v. De Bautte*. 50 La. Ann. 1281; 23 S. Rep. 865 (1898).

Where a stockholder agrees to pay 10 per cent. on his stock annually for ten years, the prior dissolution of the corporation does not operate to mature assessments not yet due. *Hawks v. Bright*, 51 La. Ann.; 24 S. Rep. 615 (1898).

### **Delivery of certificate.**

Mandamus to compel delivery of stock certificate to alleged owner. Resisted on grounds that former certificate by predecessor corporation is not produced or cancelled. Willingness expressed to deliver if indemnity is given. Held, not a case under Rev. Civ. Code, art. 2279, which authorizes the court, "in case circumstances render it necessary," to order security. Respondent company may with safety deliver up certificate without security. *State ex rel. Seaton v. New Orleans & C. R. Co.*, 51 La. Ann.; 25 S. Rep. 465 (1899).

### **Corporation as stockholder.**

While, under some circumstances, one corporation may not unlawfully acquire holdings of stock in another corporation, such holdings do not partake of the fullness of

## Decisions.

perfect ownership. They rather come under the head of what Rev. Civ. Code, art. 492, describes as imperfect ownership. State ex rel. Jackson v. Newman, 51 La. Ann.; 25 S. Rep. 408 (1899).

Thus, when, under circumstances tolerating it, a corporation not possessing the express or necessarily implied power to do so, acquires stock in another corporation, it may collect dividends on and sell or dispose of such stock, and yet not have the power to vote at elections for officials to govern or manage the affairs of the corporation, which would be equivalent to engaging in a business not authorized by its charter. Id.

**Purchase of its own stock.**

The purchase of its own stock by a corporation cancels the stock; but if the stock so purchased is reissued it must be paid for by the corporator who receives it, if the debts of the corporation require payment of the shares by the shareholders. Belknap v. Adams, 49 La. Ann. 1350; 22 S. Rep. 382 (1897).

**Inspection of books.**

Article 245 of the Constitution secures to shareholders the right to inspect the books of a corporation, enforceable by mandamus. By "public inspection" as used in art. 245, is meant not the inspection of the idle, the impertinent or the curious, but inspection with a laudable object to accomplish, or a real and actual interest, upon which is predicated the request for information disclosed by the books. State ex rel. Bourdette v. New Orleans Gas Light Co., 49 La. Ann. 1556; 22 S. Rep. 815 (1897).

Under Const. 1879, art. 245, a shareholder or other person with laudable object to accomplish, or a real and actual interest upon which to predicate his request for information disclosed by the books of a corporation, may inspect them. State ex rel. Burke v. Citizens' Bank of Jennings, 51 La. Ann.; 25 S. Rep. 318 (1899).

The right is not personal strictly, but may be exercised by his agent or executor. Id.

A by-law which denies the right to inspect the books without special authority from the board of directors is void. Id.

The expense of an accountant or expert appointed by the court to assist a stockholder (a party in interest) in inspecting corporate books should not be assessed against the defendant corporation. Id.

**Receivers.**

An illegal stock subscription is not ground for the appointment of a receiver, the subscription having been approved by all the stockholders, and the full amount retained by the corporation. Mulqueeney v. Shaw, 50 La. Ann. 1060; 23 S. Rep. 915 (1898).

A receiver will not be appointed where there is no allegation of mismanagement, improper application of funds, or other acts of corporate maladministration, and only on the general allegation of the shareholders seeking the appointment, that they apprehend exposure in the future, if the corporation is not wound up, to liabilities not contemplated when they became shareholders. Id.

Appointment of receiver set aside. In re Moss Cigar Co., 50 La. Ann. 789; 22 S. Rep. 544 (1898).

The provisions of the act of 1898 (Anno. Corp. L., La., p. 30, art. 12), authorize the judges of the District Court throughout the State and of the Civil District Court for the parish of Orleans to appoint receivers of corporations, at the instance of any stockholders or creditors, when the directors or other officers of the corporation are jeopardizing the rights of stockholders or creditors by grossly mismanaging the business, or by committing acts ultra vires, or by wasting, misusing or misapplying the property or funds of the corporation. Sincer v. Alverson, 51 La. Ann.; 25 S. Rep. 650 (1899).

When appointment is proper. Metropolitan Bank v. New Orleans Brewing Assn. (Sup. Ct. La.), 26 S. 418 (1899).

Receiver's charges. Id. Title of receiver. Id.

**Dissolution.**

The particular form of words used by the court in ordering a liquidation of a corporation is of no consequence. In re Grant & Jung Furniture Co. (Sup. Ct. La.), 26 S. Rep. 97 (1899). When liquidation will be ordered. Id.

A person receiving payments from liquidators appointed by the court is estopped from afterwards attacking their appointment. Rouge v. La Fargue Bros. Co., 49 La. Ann. 998; 22 S. Rep. 190 (1897).

**Expiration of charter.**

The property and property rights of a corporation are not destroyed by the expiration of its charter. Fleitas v. City of New Orleans, 51 La. Ann.; 24 S. Rep. 623 (1898).

**Annulment of charter; debenture company cases.**

The State may allege that a corporation has no valid existence, and yet have a standing in court to prove that it should be enjoined and prohibited from continuing the business in which it is engaged. State v. New Orleans Debenture Redemption Co., 51 La. Ann.; 26 S. Rep. 586 (1899).

The Constitution contains the provision that no corporation shall issue stock or bonds except for labor done or money or property actually received. The charter of defendant read "No stock shall be issued or certificate given therefor, until the

## Decisions.

amount subscribed for shall be fully paid." The article of the Constitution and the charter were not complied with, and for that reason the organization was not perfected as required. When a corporation is organized under a general statute the organizers must observe the mode required by the statute. *Id.*

When the State seeks to enjoin a corporation, the latter must be prepared to defend, and show that its business does not expose the public with whom it deals, to inevitable loss. *Id.*

Held, that the method of business proposed by defendant was against the policy of the State, involving a certainty of loss to investors, which the laws authorizing the organization of corporations do not sustain. *Id.*

The State has an interest in annulling the charter of a corporation in which the business proposed involves the certainty of loss to investors. *State v. Louisiana Debenture Co.* (Sup. Ct. La.), 51 La. Ann.; 26 S. Rep. 592 (1899).

The State can institute proceedings to test the legality of a corporate purpose, though the statute provides that corporations may be organized for carrying on any lawful business, and there has been no legislative action declaring illegal the purpose for which the corporation is organized. *State v. Debenture Guarantee & Loan Co.*, 51 La. Ann.; 26 S. Rep. 600 (1899).

Institution of an action by the State to have declared unlawful the purpose for which an alleged corporation was organized, is not an admission by the State of its corporate existence, estopping it from contest-

ing the same. *Id.* Such action must be brought against the corporation, not its stockholders. *Id.*

Where the charter authorized the commencement of business only when 1,000 shares should have been subscribed, and it commenced when only a few hundred were subscribed, this is sufficient for forfeiting its charter. *Id.*

## Citation, to whom addressed.

To be legal and valid a citation must be addressed to the company or corporation; and not to the president of the same. *State ex rel. New Iberia Tel. Co. v. Voorhies*, 50 La. Ann. 671; 23 S. Rep. 871 (1898).

## Taxation of franchises.

The law requiring franchises to operate street railways to be taxed according to their value makes the earning capacity of the corporation a basis for ascertaining the value at which the franchise shall be assessed, but does not exclude reference to other elements that bear directly on the question of that value. *St. Charles R. Co. v. Board of Assessors*, 51 La. Ann.; 25 S. Rep. 90 (1898).

Starting with the earning capacity as a basis, it is competent for the assessor to consider other matters having a bearing upon the value of the franchise — other facts and circumstances tending to augment such value, on the one hand, or diminish it on the other. *Crescent City R. Co. v. Board of Assessors*, 51 La. Ann.; 25 S. Rep. 311 (1897).







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**MAINE.**

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# MAINE.

## LAWS OF 1899

### CHAPTER 115.

#### Sale of Real Estate on Execution.

AN ACT relating to the sale of real estate of corporation on execution.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Real estate, or any interest therein, of any corporation not created for supplying cities or towns with water, nor for educational, religious, street, lighting, telegraph, telephone, or any public purposes, may be seized and sold on execution at public auction, either as real estate of banks, or as rights of redeeming real estate mortgaged, are taken on execution and sold, without the execution creditor first exhausting his remedy against the personal property of such corporation, and subject to the same right of redemption as is provided in either case. Seizure and sale by either of the methods provided in this act, pass to the purchaser all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution, or seizure and sale of corporation real estate on execution.

(Approved March 17, 1899.)

### CHAPTER 123.

#### Tax on Foreign Banking Corporations.

AN ACT in relation to foreign banking associations and corporations.

Section 1. Every banking association or corporation not incorporated under the laws of this State or of the United States, that maintains a branch or agency in this State for the transaction of a banking business, shall pay to the State treasurer a tax of one-fourth of one per cent. per annum on the amount of such business done in this State. One-half of said tax shall be paid on the amount of such business for the six months ending on the last Saturday of April, and the other half on the amount for the six months ending the last Saturday of October, or for such portion of such periods as said association or corporation may transact business in this State. The amount of such business done in this State shall be ascertained by first computing the daily average for each month of the period of all the moneys outstanding upon loans and investments and of all other moneys received,

used or employed in connection with such business, and by them\* dividing the aggregate of such monthly averages by the number of months covered by said return; and the quotient resulting shall be deemed the amount of such business. The amount of such tax so ascertained shall be paid to the State treasurer semi-annually within ten days after the first Mondays in June and December.

§ 2. It shall be the duty of such association or corporation and of the manager or agent of such branch or agency, to cause a written report to be made to the bank examiner on or before the last Saturdays of May and November of each year, verified by the oath of such manager or agent, giving the amount of such business transacted in this State under the rule given in section one, and stating the amount of State tax which such branch or agency is liable to pay, and setting forth in detail the daily average for each month preceding the last Saturday of April and October; and also giving such further or additional information as to the business of such foreign banking association or corporation done in this State as may be required by the bank examiner.

§ 3. Every such banking association or corporation and its managers, agents and employes, shall cause to be kept at all times in the office where such business is transacted in this State, a full and accurate account of the moneys used or employed in such business and of the deposits therein, and such account together with the books, papers and records relating to the business done in this State, shall be subject to the inspection and examination of the bank examiner, or of any clerk designated by him, during business hours of any day on which business may be legally transacted.

§ 4. Except as hereinbefore provided, no banking association, unless incorporated under the laws of this State or of the United States, shall maintain any branch or agency in this State for the transaction of banking business. Any officer, agent or employe of such association or corporation doing business in this State contrary to the provisions of this act, shall be subject to a penalty of not less than one hundred nor more than five hundred dollars for each offense, to be recovered by indictment to the use of the State.

§ 5. This act shall take effect January one, nineteen hundred.

(Approved March 17, 1899.)

\* So in original.

## DECISIONS

(Include 44 Atl. Rep. to Oct. 4, 1899.)

**Powers of director to act singly.**

Directors of corporation, as such, have no implied authority to act singly. They can only act as a board, unless there be an express or implied delegation of authority to act individually. *Morrison v. Wilder Gas Co.*, 91 Me. 492; 40 Atl. Rep. 542.

**Corporate seal as evidence.**

The presence of a corporate seal upon an instrument, purporting to be the contract of a corporation, which does not appear to have been affixed by one having authority, or by a proper official in the general line of his authority, is not even *prima facie* evidence that such instrument is the contract of the corporation. A contract under seal, executed by the agents of a corporation, is subject to the same rules of evidence and of law as a similar contract executed by the agents of an individual. In order to prove the execution of such a contract, it must be shown that the agents by whom the contract purports to have been executed, were in fact agents of the corporation, having authority to execute the contract in question or contracts of a similar nature. *Id.*

**Evidence of contract.**

In an action to recover the purchase price of materials furnished by the plaintiffs for the construction of a gas plant, the defendant denied that it had ordered the goods or received them, or that it had any connection whatever with the construction of the plant. For the purpose of showing that the defendant did construct this plant, and that it received and used these articles in the construction, the plaintiffs were allowed to introduce in evidence, against the defendant's objection, a written instrument which purported to be a contract executed by the defendant corporation, and which provided for the construction of the plant. This instrument bore the corporate seal of the defendant, and was executed in the name of the defendant corporation by one of its directors, who was also chairman of its executive committee. But there was no evidence, by record or otherwise, that the contract was ever authorized by the corporation, or that the director had authority to execute this contract, or contracts of this general description, or that the executive committee, or any member thereof, had any authority to make contracts of this nature, or any contract whatsoever for the defendant corporation. It was held that the in-

strument was not proved to be the contract of the corporation, and that it was improperly admitted as evidence. *Morrison v. Wilder Gas Co.*, 91 Me. 492; s. c., 40 Atl. Rep. 542.

**"Person" includes corporation.**

A corporation is a person within the meaning of the fourteenth amendment to the Constitution of the United States, and other constitutional clauses. *Hammond Beef & Provision Co. v. Best*, 91 Me. 431; 40 Atl. Rep. 338.

**Sale of corporate property.**

A sale and conveyance of corporate property, duly authorized by the stockholders, will be sustained and declared valid. *Caster v. Twitchell-Champlin Co.*, 91 Me. 524; s. c., 40 Atl. Rep. 559.

**Quorum; what constitutes.**

At the organization of a corporation, the capital stock was fixed at \$30,000, and was divided into shares of \$50 each. Subsequently the corporation adopted the following by-law: At all legal meetings of the company there must be present at least one-third of the stockholders, holding at least one-third of the shares of stock, to constitute a quorum to do business." Only ninety-six shares of stock were ever subscribed for or issued. It was held that the presence at a stockholders' meeting of one-third of the stockholders in number, holding at least one-third of the ninety-six shares issued or subscribed for, was sufficient to constitute a quorum, and that a conveyance authorized at such a meeting was valid. *Id.*

**Foreign corporation; residence of; debts due foreign corporations.**

A corporation created by the laws of another State has its residence in such State, and does not gain a citizenship in this State by doing business here, although it occupies a store here, which is managed by clerks and agents residing here, and pays taxes on its stock of merchandise here. The presumption that the citizenship of stockholders is identical with that of the corporation is one of law, not to be defeated by averment or evidence to the contrary. *Hammond Beef & Provision Co. v. Best*, 91 Me. 431; s. c., 40 Atl. Rep. 338.

A debt due a corporation created in another State is not barred by the debtor's discharge in insolvency here, the creditor

## MAINE.

## Decisions.

not participating in such proceedings, nor accepting a dividend, although all the usual notices to creditors be served on its resident agent in the manner provided by law; and notwithstanding the act of 1893, providing that no action shall be maintained by a creditor against a debtor, who has received his discharge in insolvency, upon any demand that would have been discharged by insolvency proceedings if proved against such debtor's estate. *Id.*

**Corporate existence; expiration of term.**

In an action brought by a company against another company, to recover damages for the violation of an alleged contract, the defendant filed a motion to dismiss the suit on the grounds that the plaintiff's charter had expired, and that the three years subsequent thereto, within which, under Revised Statutes, chapter 46, section 24 (Anno. Corp. L., Me., p. 14), the corporation could prosecute and defend suits, close its business and distribute its capital, had also expired. It was held that the plaintiff corporation has its existence only by virtue of its charter, and that its continued life for three years more under the general statute had expired. The plaintiff, having no corporate existence, can neither recover judgment nor suffer one against itself; and the action was rightfully dismissed. *Maine Shore Line Ry. Co. v. Maine Cent. R. Co.*, 43 Atl. Rep. 113.

**Stockholder's liability for corporate debts.**

The stockholders of the Southern Loan and Trust Company, under its charter,

granted by the State of Maine, are individually responsible, equally and ratably, and not one for the other, for all contracts, debts and engagements of the corporation, to a sum equal to the amount of the par value of the shares owned by each, in addition to the amount invested in such shares. Upon a creditor's bill to compel stockholders to ratably contribute to the payment of corporate debts, under such a charter provision, equity is the most appropriate, if not the exclusive remedy. Such a provision creates a liability on the part of the stockholders for an amount equal to the par value of stock held by each, if used to pay corporate debts. The charter liability is separate and distinct from that created by the general statutes (Gen. Stats., ch. 46, § 47; Anno. Corp. L., Me., p. 17), pertaining to corporations, and under which stockholders who have not fully paid for their stock, may be, under certain conditions, exempt from personal liability, as, for instance, when the debt is a mortgage debt. *Maine Trust & Banking Co. v. Southern Loan & Trust Co.*, 43 Atl. Rep. 24.

The assets of the corporation must first be exhausted before this personal liability of the stockholders in such a corporation is incurred. Such liability can only be enforced by creditors, and not by the corporation, as in the case of unpaid subscriptions, and the liability attaches to all stockholders when judgment has been obtained and the assets of the corporation are exhausted, having no reference to the date of the debt. The liability will not be increased if any stockholder proves to be insolvent or beyond the reach of process. *Id.*







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MARYLAND.

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# MARYLAND.

(Legislature did not meet in 1899.)

## DECISIONS.

(Include 44 Atl. Rep. to Oct. 4, 1899.)

### **Amendment of charter by legislature; rights under Constitution. Election of officers; by-laws.**

The Constitution of Maryland, 1851, article 3, section 47 (present § 48, Anno. Corp. L., Md., p. 5), provided for corporations to be organized under the general laws, and that all acts and special acts pursuant to such section could be altered from time to time, and repealed. A charter enacted thereunder provided that the general assembly might at any time alter or amend it. It was held that the right of the legislature to amend the charter of a corporation organized under a special act in 1853, was unquestioned. Although no power is reserved to the legislature to amend a charter, it may lawfully do so where the corporation accepts the amendment. Where, in violation of the Federal Constitution (art. 1, § 10), there has been an impairment of the obligation of the original contract by an amendment of a charter granted by the State, the corporation only has a right to complain. O'Phinney v. Trustees Sheppard & Enoch Pratt Hospital, 42 Atl. Rep. 58.

### **Inspection of books by stockholders; mandamus.**

Under Code, article 23, section 5 (Anno. Corp. L., vol. 1, Md., p. 9), requiring the president and directors of corporations to keep accounts of their transactions, which shall be open to inspection by the members, the right to such inspection may be enforced by mandamus, the remedy by an action at law for damages for a refusal being inadequate. A corporation cannot deny a stockholder the right to inspect its books and accounts because he is engaged in the same business; and desires the inspection to obtain information to be used in his own business in competition with the corporation, since the right of inspection is absolute under the section above referred to. The right of examination given by such section includes all books, papers and accounts containing the transactions of the corporation. Such right must, however, be exercised at a reasonable time. Weinhenmayer v. Bitner, 42 Atl. Rep. 245.

A by-law of a corporation, authorizing the directors to select judges of an election of corporate officers, and making the decision of such judges, as to the qualifications of voters and the sufficiency of proxies, final and conclusive, does not preclude the members from attacking the result of the election for fraud of the judges in counting the ballots and in accepting and rejecting proxies. Triesler v. Wilson, 42 Atl. Rep. 926.

Maryland Statutes, art. XXIII, § 11; Anno. Corp. L., Md., p. 10.

### **Preferred stock; rights of holders on insolvency.**

Ordinary preferred stockholders in an insolvent corporation are, on a distribution of its assets, entitled to nothing until creditors are first paid. The mere fact that stock is called "preferred stock," does not per se define the rights in such stock, which depend on the statute or contract under which it was issued. Heller v. National Maine Bank, 43 Atl. Rep. 800.

But preferred stock issued under acts 1868, chapter 471, section 219 (Md. Stats., art. XXIII, § 294; Anno. Corp. L., Md., p. 30), authorizing corporations to issue preferred stock in place of mortgage bonds, accompanied with an agreement to pay a perpetual 6 per cent. dividend out of the profits before distribution among the other stockholders, and act 1880, chapter 474 (Md. Stats., art. XXIII, § 294; Anno. Corp. L., Md., p. 30), providing that such preferred stock should be a lien on the franchises and property of such corporation and have priority over any subsequently created mortgage or other incumbrance, is entitled to a preference over subsequent creditors of the corporation on a distribution of its assets in case of insolvency. The giving of a prior lien over any subsequently created mortgage or incumbrance, to preferred stock issued by a corporation to obtain money, is not against public policy. Id.

### **Extent of lien of preferred stock.**

Preferred stock issued under and subject to the acts above referred to, is not a prior

## Decisions.

lien on fire insurance money received by the corporation for losses sustained. The subsequent insolvency of the corporation does not bring the funds under the lien. Such lien does not extend to the merchandise manufactured for sale by such corporation, and hence does not cover book accounts representing sales of such merchandise. Such lien does not attach to the rents of the property of the corporation. *Id.*

**Call of meeting for issuance of preferred stock.**

Act 1861, chapter 471, section 219 (Md. Stats., art. XXIII, § 294; Anno. Corp. L., Md., p. 30), requiring the issuance of preferred stock by a corporation to obtain money, to be authorized by a general meeting of the stockholders, the manner of calling such meeting is governed by Code, article 23, section 76 (Anno. Corp. L., Md., p. 21), relating to meetings of the stockholders to increase or diminish the amount of capital stock, rather than by section 6, permitting stockholders to call a general meeting where the president and directors have refused so to do. *Id.*

**Stock subscriptions; action to recover.**

A stockholder who has lost the right to rescind his contract of subscription cannot, in an action by a trustee of the insolvent company to recover on an unpaid stock subscription, disaffirm a voidable contract between the company and its directors, and defeat his liability, though the suit is to collect money with which to pay obligations arising out of the contract, since the right to disaffirm the contract can only be exercised by the stockholders collectively. In such an action, where the stockholder relies on fraud as inducing his subscription, it is a question for the jury whether he rescinded the subscription in a reasonable time after discovering the fraud. *Urner v. Sollenberger*, 43 Atl. Rep. 810.

**Insolvency; sales by receivers.**

Where a decree is entered by consent, appointing receivers for an insolvent corporation, and directing a sale of the property after published notice thereof, and the receivers make a private sale, without notice, for an inadequate price, the corporation is entitled to except. And a majority stockholder, who is also president of the corporation, is entitled to be made a party, to enable him to except. *So. Balt. Brick Co. v. Kirby*, 42 Atl. Rep. 913.

A decree in receivership proceedings, directing a sale of property, and requiring that notice thereof be given by advertisement, requires a public sale. And where a current decree directs a sale of property by a re-

ceiver at public auction, and the receiver desires to have a private sale, the proper course is for the court, on petition of the receiver, to pass an order to show cause why such a sale should not be authorized. *Id.*

**Insolvency; actions to enforce stockholder's liability for unpaid subscriptions; receivers.**

A suit against a corporation on a debt, resulting in a decree for plaintiff, and the appointment of a receiver to collect unpaid stock subscriptions, is conclusive on stockholders, both as to the necessity of the assessment and the amount thereof, even though they were not personally served with process in such suit. *Castleman v. Templeman*, 87 Md. 546; s. c., 40 Atl. Rep. 275.

On the application of a creditor of a corporation, a Virginia court appointed a receiver to take charge of its assets, including unpaid stock subscriptions, and decided that the amount of such unpaid subscriptions should be found and assessed at such a rate as should be necessary to pay plaintiff's judgment, and authorized the receiver to collect them by suit if necessary. It did not appear that the receiver had declined to enforce the collection of any of the unpaid subscriptions. It was held that, where it also appeared that the receiver had power to sue in Maryland, the creditor could not sue in Maryland to collect such unpaid subscriptions, since his right to proceed individually had been merged in the decree. *Id.*

A receiver for a corporation appointed in one State may sue in the name of the corporation in another State, to collect an unpaid stock subscription, payable in the former State, when such suit does not injuriously affect the interests of citizens of the latter State, or violate its policy or laws. Where a creditor is precluded from suing to collect unpaid stock subscriptions, because of the appointment of a receiver on his petition, he cannot evade the prohibition by making the receiver a party defendant, and having him, in his answer, consent to a decree. *Id.*

**Receiver of foreign corporation.**

A State court will not appoint a receiver for a foreign corporation, where it will be necessary to assume the management of the internal affairs of the foreign corporation. So held in an action brought by a member of a foreign assessment live-stock insurance company, for the appointment of a receiver to take charge of and collect the assets of the company in the State, consisting wholly of debts due from citizens of the State, where the claim of the plaintiff was payable from assessments by the company on its policyholders in accordance with the by-laws. *Hockley v. Thomas*, 43 Atl. Rep. 766.





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MASSACHUSETTS.

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# MASSACHUSETTS.

## LAWS OF 1899.

### CHAPTER 130.

#### Days of Grace.

**AN ACT** relative to days of grace on sight drafts.

Section 1. On all drafts and bills of exchange made payable within the commonwealth at sight, three days of grace shall be allowed, unless there is an express stipulation therefor to the contrary.

§ 2. So much of chapter five hundred and thirty-three of the acts of the year eighteen hundred and ninety-eight as is inconsistent with this act is hereby repealed.

### CHAPTER 199.

#### Capital Stock; Increase.

**AN ACT** relative to mechanical and manufacturing corporations.

Section 1. For the purpose of carrying on any mechanical or manufacturing business, except that of distilling, or manufacturing intoxicating liquors, three or more persons may associate themselves together with the intention of forming a corporation with a capital of not less than five thousand dollars. Such corporation shall be subject to all laws now or hereafter in force relating to such corporations.

§ 2. Every mechanical or manufacturing corporation which is subject to chapter one hundred and six of the public statutes and acts in amendment thereof and in addition thereto may, at a meeting called for the purpose, increase its capital to such amount as may be determined by the stockholders, such increase to be made in the manner provided by existing laws.

See Anno. Corp. L., Mass., p. 28, § 34.

### CHAPTER 247.

#### Weekly Payment of Wages.

**AN ACT** to extend the application of the law relative to the weekly payment of wages.

Section 1. Section one of chapter four hundred and thirty eight of the acts of the year eighteen hundred and ninety-five, \* \* \* is hereby amended \* \* \* so as to read as follows:

§ 1. Sections fifty-one to fifty-four, inclusive, of chapter five hundred and

eight of the acts of the year eighteen hundred and ninety-four, relative to the weekly payment of wages by corporations shall apply to all contractors and to any person or partnership engaged in this commonwealth in any manufacturing business; in any of the building trades; in quarries or mines; in public works; in the construction or repair of railroads or street railways, of roads, bridges, sewers, of gas, water or electric light works, pipes or lines. And the word "corporation," as used in said section, shall include such contractors, persons and partnerships.

See Anno. Corp. L., Mass., p. 61.

### CHAPTER 453.

#### Use of Streets by Corporations.

**AN ACT** relative to the use of streets by corporations.

Section 1. Corporations engaged in or organized for the purpose of manufacturing, buying, selling, distributing or dealing in artificial cold and refrigerating and cooling materials, may with the consent in writing of the mayor and aldermen of a city or the selectmen of a town, and subject to such conditions and restrictions as they may impose, dig up and open the grounds in any of the streets, lanes and highways thereof, so far as is necessary to accomplish the objects of the corporation; but such consent shall not affect the right or remedy to recover damages for an injury caused to persons or property by the doings of such corporations. They shall put all such streets, lanes and highways which are opened, into as good repair as they were in when opened; and upon failure so to do within a reasonable time shall be deemed guilty of a nuisance.

### CHAPTER 359.

#### Trade-Marks.

**AN ACT** relative to the registration and protection of labels, trade-marks, stamps and forms of advertisements.

Section 1. Section one of chapter four hundred and sixty-two of the acts of the year eighteen hundred and ninety-five is hereby amended by striking out the whole of sail

## Trade-marks.

section and inserting in place thereof the following:

§ 1. Any person, firm, association, union or corporation may adopt a label, trade-mark, stamp or form of advertisement not previously owned or adopted by any other person, firm, association, union or corporation, and may file such label, trade-mark, stamp or form of advertisement for record, by depositing two copies or fac similes thereof in the office of the secretary of the commonwealth, one of which copies or fac similes shall be attached by the secretary of the commonwealth to the certificate of record hereinafter referred to; and shall file therewith a certificate specifying the name or names of the person, firm, association, union or corporation so filing such label, trade-mark, stamp or form of advertisement, his or its residence, situation or place of business, the kind of merchandise to which such label, trade-mark, stamp or form of advertisement has been or is intended to be appropriated, and the length of time, if any, during which it has been in use. In case such label, trade-mark, stamp or form of advertisement has not been and is not intended to be used in connection with merchandise, then the particular purpose or use for which it has been or is intended shall be stated in the certificate. Such certificate shall be accompanied by a written declaration, verified under oath by the person or by some member of the firm, or officer of the association, union or corporation, by which it is filed, to the effect that the parties so filing such label, trade-mark, stamp or form of advertisement have a right to use the same, and that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the copies or fac similes filed therewith are true and correct. The secretary of the commonwealth shall issue to the person, firm, association, union or corporation depositing such label, trade-mark, stamp or form of advertisement, a certificate of record, under the seal of the commonwealth, and the secretary shall cause the certificate to be recorded in his office. Such certificate of record, or a certified copy of its record in the office of the secretary of the commonwealth, shall in all suits and prosecutions under this act be sufficient proof of the adoption of such label, stamp, trade-mark or form of advertisement, and of the existence of the person, firm, association, union or corporation named in the certificate. The fee for filing the certificate and declaration and issuing the certificate of record herein described shall be two dollars. No label, trade-mark, stamp or form of advertisement shall be recorded which could reasonably be mistaken for a label, trade-

mark, stamp or form of advertisement already on record.

§ 2. Section two of said chapter four hundred and sixty-two is hereby amended by inserting after the word "trade-marks," in the third line, the word "stamps," so as to read as follows:

§ 2. The secretary of the commonwealth is authorized to make rules and regulations, and prescribe forms for the filing of labels, trade-marks, stamps and forms of advertisement under the provisions of this act.

§ 3. Section four of said chapter four hundred and sixty-two is hereby amended by striking out the whole of said section and inserting in place thereof the following:

§ 4. Every person who, without authority from the owner of a label, trade-mark, stamp or form of advertisement recorded as aforesaid, shall make, use, sell, offer for sale, or deal in, or have in his possession with intent to use, sell, offer for sale, or deal in any counterfeit or imitation of such label, trade-mark, stamp or form of advertisement, knowing the same to be counterfeit or imitation, and every person who, without authority from such owner shall affix, impress or use such label, trade-mark, stamp or form of advertisement upon any goods, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

§ 4. Every person who shall, with intent to defraud any person or persons, knowingly and wilfully cast, engrave or manufacture, or have in his possession, or buy, sell, offer for sale or deal in, any die, plate, brand, mould, or engraving on wood, stone, metal or other substance, of any label, trade-mark, stamp or form of advertisement recorded pursuant to the statutes of this commonwealth, or any printing presses, types or other tools, machines, or materials provided or prepared for making any counterfeit or imitation of such label, trade-mark, stamp or form of advertisement, shall be punished by a fine not exceeding two hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment.

§ 5. Any person who shall with intent to defraud any persons, knowingly and wilfully aid or abet in the violation of any provision of this act or of said chapter four hundred and sixty-two shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment.

§ 6. Section six of said chapter four hundred and sixty-two is hereby amended by inserting after the word "trade-mark," in the third line, the word—"stamp,"—also by inserting in the last line, after the word "person," the word "firm," and also by striking out the words "or union," in the last line, and inserting in place thereof the

## Decisions.

words "union or corporation," so as to read as follows:

§ 6. In any suit or prosecution under the provisions of this act the defendant may show that he or it was the owner of such label, trade-mark, stamp or form of advertisement prior to its being filed under the provisions of this act, and that it has been filed wrongfully or without right by some other person, firm, association, union or corporation.

§ 7. Section seven of said chapter four hundred and sixty-two is hereby amended by inserting in the fifth line, before the word "advertisements," the words "forms of," so as to read as follows:

§ 7. Chapter four hundred and forty-three of the acts of the year eighteen hundred and ninety-three is hereby repealed. But this repeal shall not affect any legal proceedings, civil or criminal, instituted under or by virtue of said act; and all labels, trade-marks, stamps and forms of advertisements already recorded according to the provisions

of section four of said chapter, shall be deemed to have been duly recorded according to the provisions of this act.

§ 8. Section two of chapter two hundred and twelve of the public statutes, as amended by section two of chapter three hundred and forty-two of the acts of the year eighteen hundred and eighty-five, and by chapter two hundred and eighty-four of the acts of the year eighteen hundred and ninety, is hereby further amended by adding thereto the following, namely:

Tenth. To search for counterfeits or imitations of any label, trade-mark, stamp or form of advertisement recorded pursuant to the statutes of this commonwealth; any goods upon which any such counterfeit or imitation has been impressed, affixed or used; and any dies, plates, brands, moulds, engravings, or printing presses, types, or other tools, machines and materials prepared or provided for making any such counterfeit or imitation.

(Approved May 11, 1899.)

## DECISIONS.

(Include 54 N. E. Rep.)

## Suits by stockholders; pleadings.

A stockholder's bill against the corporation and its president alleged that salaries were fixed at the time of the incorporation, without, however, stating the manner in which it was done, and that afterwards the president, who was also treasurer and manager, began to appropriate to himself a larger salary, and kept such fact and all financial transactions of the corporation concealed from plaintiff, and that when the plaintiff did learn of it, he protested, and the president called a meeting, and as controlling director caused to be voted to himself the increased salary for the future, the same to relate back to the time when such appropriation began. It was held that such bill was sufficient to require an answer as to the alleged overpayment of salary prior to the time it was fixed at the increased amount. Allegations in such bill that the plaintiff demanded that the president should repay the salary wrongfully paid to himself, and that the president refused to do so, and being a controlling stockholder and director, and the other directors hence refusing to take any action, it was impossible for the plaintiff to obtain any remedy in the name of the corporation, may be construed as an allegation, that before bringing a stockholder's suit against the corporation and its

president, plaintiff had exhausted all practicable means to induce the corporation to sue. *Blair v. Telegram Newspaper Co.*, 172 Mass. 201; s. c., 51 N. E. Rep. 1080.

## Stockholder's action against corporation for money loaned and fraud inducing subscriptions to stock; pleadings; parties.

A bill by a stockholder against the trustees of a corporation, alleging that he was induced by fraudulent representations to become a stockholder and to loan money to a corporation, and praying that the contract be declared void, and that the money be repaid to him, and alleging mismanagement of funds by the trustees for their personal gain, to the damage of the corporation, and praying for the appointment of a receiver to convert the property of the corporation into money and to distribute it, is multifarious, there not being an allegation that the corporation had not sufficient means to repay, so as to make the appointment of a receiver incidental to the repayment to the plaintiff of his money. In such an action it is necessary that the plaintiff sue for all having like interests as himself or make them defendants; or, if the stockholders are so numerous as to make it impracticable to join all as parties, then enough of them, who are not also trustees, should be made

## Decisions.

**parties, to have the interests of the stockholders as a class represented before the suit.** Davis v. Peabody, 170 Mass. 397; s. c., 49 N. E. Rep. 750.

**Stockholder's liability imposed by laws of another State; enforcement thereof.**

General Statutes Kansas, 1889, par. 1204 (Anno. Corp. L., Kan., p. 18), allowing suit to be brought against any or all stockholders of a dissolved corporation to enforce the proportionate liability of each, does not preclude a judgment creditor of a dissolved corporation from suing under paragraph 1192, which allows a judgment creditor of a corporation after a return nulla bona, to enforce the judgment against any stockholder by suit. It was also held that the cause of action arising under such paragraph 1192 is transitory and the liability of a stockholder of a Kansas corporation will be enforced by the courts of Massachusetts when the stockholder resides in that State.

The individual liability of a stockholder is directly to the creditor and does not pass to a receiver of the corporation. Hancock Nat. Bank v. Ellis, 172 Mass. 39; 51 N. E. Rep. 207.

**Dissolution; action against stockholders; Kansas Stats. 1889, pars. 1200, 1204 interpreted.**

Under Gen. Stats. Kansas, 1889, par. 1204 (Anno. Corp. L., Kan., p. 18), providing that if any corporation be dissolved leaving debts unpaid, suits may be brought against any stockholders without joining the company, and par. 1200, which provides that for the purpose of such suit a corporation shall be deemed to be dissolved when it shall have suspended business for more than a year, a cause of action accrues against the estate of a deceased stockholder of a bank one year after suspension of payment, within the meaning of Pub. Stats., chap. 136, §§ 9, 13, limiting action against executors and administrators to two years after their appointment or to two years after the cause of action accrues, although Gen. Stats. Kansas, par. 1192, provides as an alternative remedy that a creditor may first proceed against the corporation, and, upon return of execution unsatisfied, may then proceed against the stockholders. Stebbins v. Scott, 172 Mass. 356; s. c., 52 N. E. Rep. 535.

**Receivers of insolvent corporations; adjustment of rights of parties; priorities.**

Where a bill for the appointment of a receiver is entertained under general equity powers, and no injunction issued on the filing of the bill, and the insolvent corporation continued its business as usual, and those dealing with it in the interim were not

influenced by the pending suit, and no attachments or other liens were placed on the property, the rights of the parties should be adjusted from the date of the appointment of the receiver. Priorities in the claims for taxes and labor, preferred by common law or statute, will be enforced in the distribution of the assets of an insolvent corporation in equity proceedings, appointing a receiver to wind up its affairs. Jones v. Arena Pub. Co., 171 Mass. 22; s. c., 50 N. E. Rep. 15.

**Foreign corporations; sale of intoxicating liquors by.**

Statutes 1894, chap. 381, § 1 (Anno. Corp. L., Mass., p. 53), prohibits any foreign corporation from engaging in any business the transaction of which by domestic corporations is not permitted. Pub. Stats., chap. 106, §§ 7, 14, prohibit corporations from being organized under general laws for distilling or manufacturing intoxicating liquors; but there is no express prohibition against corporations being formed to sell intoxicating liquors; and the statute authorizing corporations to be formed to carry on any lawful business, with certain exceptions, among which selling liquors is not included. Corporations had formerly been chartered to manufacture and sell liquors, and several charters of hotel companies authorized them to sell liquors. It was held that a foreign corporation chartered to manufacture and sell intoxicating liquors could sell them within the State. Enterprise Brewing Co. v. Grimes, 53 N. E. Rep. 855.

**Evidence to show election of officers.**

In an action against officers of a corporation, oral testimony that, at a meeting of stockholders of the corporation for the election of officers, minutes were made by the clerk, which were the only record of the proceedings, and that these minutes were lost, and that certain persons had been elected as officers, who thereafter had the active management of the business of the corporation, and held themselves out as such officers, is competent to show that such persons were officers of the corporation, *de facto*, if not *de jure*. Hudson v. J. B. Parker Mach. Co., 53 N. E. Rep. 867.

**Contract with director.**

A contract made by a corporation with one of its directors by which the latter was employed to settle claims against the company, and was to receive a commission on the bonds of the company used in payment, and whatever discount he could obtain on the claims, where it was made in good faith, was not improvident and has been performed, cannot be avoided and the discounts recovered by a receiver subsequently appointed for the corporation. Ft. Payne Rolling Mill v. Hill, 54 N. E. Rep. 532.

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**Contract without seal.**

A contract entered into by a corporation is valid, though its seal be not affixed. *Speirs v. Union Drop Forge Co.*, 54 N. E. Rep. 497.

**Salary of president.**

A director and stockholder of a corporation promised to pay one elected as its president a certain salary, but did not inform the other directors, and the by-laws did not provide for any salary, nor did the directors vote to give any. It was held that the president could not recover for his services as

such. *Henry Wood's Sons Co. v. Schaefer*, 53 Atl. Rep. 881.

**Liability of corporations for contempt of court.**

A corporation may be held liable for a criminal contempt of court, although that crime involves a specific intent as a necessary element. Although it cannot be arrested or imprisoned for crime, it may be punished by fine, which may be enforced by execution against its property. *Telegram Newspaper Co. v. Commonwealth*, 172 Mass. 294; 52 N. E. Rep. 445.







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## LAWS OF 1899.

- 19. Taxation of railroad, express, telegraph and telephone companies.
- 35. Corporations for selling fruit and farm products.
- 60. Extension of existence.
- 77. Employment of women and children.
- 128. Consolidation of street railways, etc.
- 172. Surrender of special railroad charters.
- 179. Taxation of express, telephone and telegraph companies.
- 202. Use of emery or buffing wheels.
- 203. Annual reports.
- 233. Employment of women or children.
- 245. Sale of merchandise.
- 255. Unlawful monopolies and combinations.
- 257. Garnishment of corporation.

### Act No. 19.

#### Taxation of Railroad, Express, Telegraph and Telephone Companies.

AN ACT to provide for the assessment and levy of taxes upon the property of railroad companies, express companies, telegraph companies and telephone companies and the collection thereof, and the designation and election of a State board of assessors to make such assessment and levy, and defining the duties of such board, and the compensation of its members, and to repeal all other acts or parts of acts whether in the acts for incorporation of union railroad station and depot grounds, or any other law of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, and to apply the taxes assessed and collected under this act to pay "the interest upon the primary school, university and other educational funds and the interest and principal of the State debt, in the order herein recited until the extinguishment of the State debt, other than amounts due to educational funds, when such taxes to be collected under this act be added to, and constitute a part of the primary school interest fund."

Section 1. It shall be the duty of the governor, by and with the advice and consent of the senate, within five days after this act shall have been approved by the governor, to appoint three resident freeholders of this State, who shall be duly qualified electors thereof, who shall constitute a State board of assessors, with powers and duties as prescribed under the provisions of this

act. The auditor-general shall always, during his term of office, be president of said board, but shall have no power except as presiding officer of said board, unless expressly given herein. The persons so appointed shall hold their offices for the term of two years from and after January fifteenth, eighteen hundred ninety-nine, or until their successors shall be appointed and have qualified. At the expiration of the terms of office of the members of said board their successors in office, so long as this act shall remain in force, shall be appointed by the governor by and with the advice and consent of the senate. All appointments which are provided to be made by the governor by this section of this act shall be made while the legislature is in session, and not at any other time, except in cases where vacancies in office shall occur otherwise than by expiration of the term of office of any member of said board. In case of vacancy in office occurring otherwise than by expiration of the term the governor shall have power to appoint to fill such vacancy at any time, and the persons so appointed shall hold office until the next meeting of the legislature after their appointment and no longer.

§ 2. Said board shall elect a secretary at a salary not to exceed eighteen hundred dollars per annum. The secretary so appointed shall hold his office during the pleasure of said board and shall keep a record of all the proceedings of said board, which record with all other papers or proceedings of said board shall be a part of the records of the auditor-general's office, and of which the auditor-general shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session shall perform such duties as may have been assigned him by said board or as he may be directed to perform by the auditor-general.

§ 3. The members of said board, and the secretary, shall take and subscribe the constitutional oath of office to be filed with the secretary of State.

§ 4. Said board shall hold its sessions at the office of the auditor-general. It shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access

## Taxation railroad, express, etc., companies.

to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. It shall make an assessment-roll each year containing a list of all property by it assessed, which assessment-roll shall be filed with the auditor-general and be open to inspection like the other files and records in his office. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of said board, and attested by the secretary thereof, directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the State upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board; and if any corporation, firm or individual refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall forfeit the sum of five hundred dollars to the State. The sum so forfeited may be recovered in a proper action brought in the name of the people of the State of Michigan in any court of competent jurisdiction.

§ 5. Said board shall meet on the first Monday in September in each year, and between that time and the first Monday in November of each year assess all the property in this State of railroad companies, express companies, telegraph companies and telephone companies now organized or hereafter organized and doing business in this State, under any law of this State or any State or country. Said board may inspect all the property belonging to said companies, for the purpose of arriving at the true cash value thereof, for the purposes of assessment and taxation. Said board may, for the same purpose, take into consideration the reports and returns of said companies on file in the office of any officer in this State, the value of the stock of such corporation as listed on the stock exchange of New York and Boston, together with such other evidence at it may be able to obtain bearing upon the true cash value of the property of said companies in this State.

§ 6. Said board shall determine and enter upon its record the aggregate taxes raised in the whole State, for State, county and municipal purposes, for the current year, not including special assessments on prop-

erty particularly benefited. All State, county and municipal officers shall make such returns to said board as it shall require upon blanks to be furnished such officers by the auditor-general, so as to enable said board to ascertain with exactness the aggregate taxes as above provided. Said board shall determine the average rate of State, county and municipal taxes throughout the State by dividing aggregate taxes for the current year, as ascertained under this section, by an aggregate sum to be determined by adding to the total value of all property assessed under this act the equalized value of all property assessed in the State as fixed by the State board of equalization at its last meeting. Municipalities within the meaning of this act shall be construed to include school districts as well as cities, villages and other municipalities.

§ 7. Said board shall tax the property of the several companies as assessed by it, at the average rate of taxation as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment-roll opposite the descriptions of their respective properties, and the tax so extended shall be paid to the State treasurer by said companies respectively on or before the first Monday in January following the assessment and levy aforesaid, which tax when so assessed and levied shall be in lieu of all other taxes for State and local purposes, not including special assessments on property particularly benefited made in any county, city, village or township. The taxes so extended against said companies shall constitute a lien upon all the property of said companies, real, personal and mixed from the time of the extension of said taxes until the payment thereof, which lien may be enforced by the State like other liens in any court of competent jurisdiction.

§ 8. Any person or persons, joint-stock company or corporation owning and operating a railroad in this State, or owning and operating a union railroad station and depot in this State, whether under special charter or the general railroad law or the act to authorize the incorporation of union railroad stations and depots, or any other act of this State or any other State or country, shall be deemed a railroad company within the meaning of this act.

§ 9. Any person or persons, joint-stock association or corporation, wherever organized or incorporated or wherever residing, engaged in the business of conveying to, from or through this State, or any part thereof, money, packages, gold, silver, plate, or other articles by express, not including the ordinary lines of transportation of merchandise and property in this State, shall be deemed an express company within the meaning of this act.

§ 10. Any person or persons, joint-stock association or corporation, wherever organ-

## Taxation railroad, express, etc., companies.

ized or incorporated or wherever residing, engaged in the business of transmitting to, from, through or in this State, telegraphic messages, shall be deemed a telegraph company within the meaning of this act.

§ 11. Any person or persons, joint-stock association or corporation, wherever organized or incorporated or wherever residing, engaged in the business of transmitting to, from or through or in this State telephonic messages, shall be deemed a telephone company within the meaning of this act.

§ 12. Every railroad, express, telegraph and telephone company defined in the preceding sections, doing business in this State, shall annually, between the first and thirty-first days of May in each year, under the oath of such person or persons, or under the oath of the president, secretary, treasurer, superintendent or chief officer of such association or corporation, make and file with the auditor-general, for the use of said board, in such form as the auditor-general may prescribe, a statement containing the following facts:

First. The name of the company;

Second. The nature of the company, whether a person or persons, an association or corporation, and under the laws of what State or country organized;

Third. The location of its principal office;

Fourth. The name and post-office address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth. The name and post-office address of the chief officer or managing agent of the company in Michigan;

Sixth. The number of shares of the capital stock;

Seventh. The par value and market value, or if there be no market value, the actual value of the shares of stock on the first day of May;

Eighth. A detailed statement of the real estate owned by the company in Michigan, where situated, and the value thereof as assessed, if it is assessed for taxation under any other law;

Ninth. A full and correct inventory of the personal property including moneys and credits owned by the company, in Michigan, on the first day of May, where situate and the value thereof;

Tenth. The total value of the real estate owned by the company, situate outside of Michigan;

Eleventh. The total value of the personal property of the company and situate outside of Michigan;

Twelfth. In case of railroad, telegraph and telephone companies, the whole length of their lines and the length of so much of their lines as is without and as is within Michigan, which lines shall include what said railroad, telegraph and telephone companies control and use as owners, lessees, or otherwise;

Thirteenth. A statement of the entire

gross receipts of the company, from whatever source derived, for the year ending the first day of May, from business wherever done;

Fourteenth. A statement of the gross receipts for the year ending the first day of May from whatever source derived, and the total gross receipts of the company for such period in this State;

Fifteenth. In case of express companies, the whole length of the lines of rail and water routes over which the company did business on the first day of May, and the length of so much of said lines of land and water transportation as is without and is within this State, naming the lines within this State, excluding all ocean lines from such statement;

Sixteenth. Such other facts and information as said board may require, in the form of the returns prescribed by the auditor-general. Blanks for making the above statement shall be furnished to such companies on application to the secretary of said board: Provided, however, That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers: Provided further, That the report herein required to be made for the year eighteen hundred and ninety-nine, shall be made on or before the first day of September, eighteen hundred ninety-nine.

§ 13. The franchises of the companies assessed under this act shall be considered in connection with the other things mentioned in section five of this act in determining the value of the property to be assessed, and in case any of said railroad companies own and operate railroads partly within and partly without this State, said board shall, for the purpose of taxation only, assess said company for the fair proportion which its property in this State bears to its entire property, and to ascertain such cash value the earning capacity of such corporate property may be considered.

§ 14. Said board shall ascertain and assess the value of all property of railroad companies, express companies, telegraph and telephone companies doing business in this State at its true cash value, and in determining the property for such purposes in this State to be taxed within the State and assessed as herein provided, the board shall be guided by the value of said property as determined by the entire capital stock of said companies and such other evidence as will enable said board to arrive at the true cash value of the entire property of said companies within this State in the proportion which the same bears to the entire property of said company, as determined by the value of the capital stock thereof and such other evidence.

§ 15. In case any company fails or refuses to make the statement required by this act, or to furnish any information requested, the

## Taxation railroad, express, etc., companies.

board shall inform itself as best it may on the matters necessary to be known in order to discharge its duties with respect to the assessment of the property of said company.

§ 16. At any time after the meeting of said board in September as above provided, and before the final assessment of the property of any such company is determined, any company or person interested shall have the right, on written application, to appear before said board and be heard as to the valuation of the property of said company, and said board may, on such application or on its own motion, correct the assessment or valuation of the property of any such company or person in such manner as will in its judgment make the valuation thereof just and equal.

§ 17. In case any company required to file a statement under the provisions of this act fails to make and file such statement on or before the thirty-first day of May, or in the year eighteen hundred ninety-nine on or before the first day of September, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the day prescribed for the making of such report, to file such statement, such penalty to be paid to the State and to be recovered in an action in the name of the people of the State of Michigan in any court of competent jurisdiction.

§ 18. Said board shall not include in its assessment against said companies any property already assessed upon its value for taxation under any other law in this State.

§ 19. All taxes collected under this act shall be applied in paying the interest on the primary school, university and other educational funds, and the interest and principal of the State debt, in the order recited, until the extinguishment of the State debt other than the accounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund, and such taxes as are collected under the provisions of this act shall be treated and disbursed as other specific taxes are now treated and disbursed.

§ 20. It shall be the duty of said board to make and prepare an assessment-roll setting forth the valuation and assessment and the taxes assessed upon all property to be assessed and taxes under the provisions of this act, and to file the same with the auditor-general of the State on or before the tenth day of December in each and every year. And it shall be the duty of the auditor-general to notify the persons or corporations so assessed to pay the taxes assessed against them respectively to the treasurer of the State of Michigan on or before the first Monday of January next succeeding the date of said notice.

§ 21. If said corporation shall neglect or refuse to pay such tax on or before February first, two per cent. a month shall be

added to such tax as a penalty and the attorney-general upon request of the governor shall commence suit or proceedings in any court of competent jurisdiction to collect the tax and penalty by foreclosure and lien upon the real estate or corporate interests assessed.

§ 22. The appointed members of the said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office (and they shall also receive their necessary expenses in the performance of their duties) both to be audited and allowed by the board of auditors and paid by the State treasurer out of the general fund.

§ 23. Said board shall attach to the assessment-roll herein provided for a certificate to be signed by the members of said board, or the majority of said members who have taken part in the assessment of the property of said companies in the following form:

We do hereby certify that we have set down in the above assessment-roll all the property of all the railroad companies, express companies, telegraph companies and telephone companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be true cash value thereof, and that we have assessed the taxes on the same at the average rate of taxes for State, municipal and local purposes levied throughout the State during the present year, not including special assessments for improvements assessed against the properties benefited in counties, cities, villages or townships.

§ 24. The words "cash value" wherever used in this act shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained at private sale and not at forced or auction sale.

§ 25. Whenever property is sold for taxes under this act, and such property is incapable of division, it may be sold as an entirety, and if there is a surplus arising from the sale of such property the same shall be turned over to the person or corporation against whom the taxes for which it is sold shall have been assessed. And if said surplus is claimed by any other person or corporation than the person or corporation for whose tax such property is sold, and such claim shall be contested, either of the contestants may prosecute an action against the other as for money had and received, and in such action the right of the parties to such surplus shall be determined. All the money arising from such sale, less the fees of the officer making such sale, shall in the first instance be paid to the State treasurer, and upon presentation to such treasurer of a certified copy of the final judgment rendered in such action he shall

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### Extension of existence.

pay over such surplus to the party recovering such judgment.

§ 26. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

§ 27. If any person or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any members of said board during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for every such offense, to be recovered in an action in the name of the people of the State of Michigan in any court of competent jurisdiction. And the recovery of such sum under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

§ 28. All other acts or parts of acts, whether contained in acts for the incorporation of union railroad stations and depot companies, or in any other law of this State so far as such acts or parts of acts are inconsistent with this act and no further, are hereby repealed: Provided, however, That all rights which the State has now under any of said acts for taxes or penalties shall not be in any way affected by this act and shall not constitute a bar against any prosecution or recovery on account of such taxes or penalties.

This act is ordered to take immediate effect.

(Approved March 15, 1899.)

### Act No. 35.

#### Corporation for Selling Fruit and Farm Products.

AN ACT to provide for the incorporation of associations to promote the business of growing, handling, storing and selling fruit and other farm products.

### Act No. 60.

#### Extension of Existence.

AN ACT to amend section one of act one hundred forty-two of the public acts of eighteen hundred eighty-nine, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores or minerals, the term of existence of which has heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such corporations," being section seven thousand thirty-five of the compiled laws of eighteen hundred and ninety-seven.

such renewed corporations," being section seven thousand thirty-five of the compiled laws of eighteen hundred and ninety-seven.

Section 1. That section one of act one hundred forty-two of the public acts of eighteen hundred eighty-nine, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal, and other ores or minerals, the term of existence of which has heretofore expired or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations," being section seven thousand thirty-five of the compiled laws of eighteen hundred ninety-seven, be and the same is hereby amended so as to read as follows:

§ 1. That it shall be lawful for any corporation heretofore or hereafter organized under the general laws of this State for mining, smelting or manufacturing purposes, whose corporate term has expired, or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least four-fifths of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Such meeting may be called in accordance with the by-laws of the corporation, and the laws of this State applicable to the same class of corporations whose term has not expired, by order of the directors de facto of the corporation. Upon the adoption of such resolution by a vote, in person or by proxy duly filed, of four-fifths of the capital stock, it shall be the duty of the president and secretary of the stockholders meeting to make, sign and acknowledge duplicate articles of association, as in the case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which article of association shall be filed with the Secretary of State and with the county clerk of the county where the corporation carries on its business, and be by both recorded in their respective offices, at the expense of said corporation; the copies so filed and the record thereof, or a certified copy of either of such records, shall be prima facie evidence of the facts therein recited; but said articles of association need not set forth in the case of corporations existing under the provisions of act number one hundred thirteen of the public acts of eighteen hundred seventy-seven, entitled "An act to revise the laws providing for the incorporation of companies for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores or minerals, and to fix the duties and liabilities of such corporations," being section seven thousand thirty-five of the compiled laws of eighteen hundred and ninety-seven.

## Employment of women and children.

tions," being sections six thousand nine hundred ninety-one to seven thousand thirty-four inclusive, of the compiled laws of eighteen hundred ninety-seven, the cash value of property conveyed to the corporation contemporaneously with its reorganization, nor the names of the directors for the first year: Provided, That this act shall not be applicable to any corporation whose business has been or may be wound up and property sold pursuant to the voluntary action of the stockholders or of any court of competent jurisdiction, or where proceedings have been commenced at the date of the approval of this act to wind up any corporation under the provisions of act thirty-nine, of the public acts of eighteen hundred ninety-five.

This act is ordered to take immediate effect.

(Approved May 2, 1899.)

See Anno. Corp. L., Mich., p. 37, § 4904a.

#### Act No. 77.

##### Employment of Women and Children.

AN ACT to amend sections two and fifteen of act number one hundred eighty-four of the public acts of eighteen hundred and ninety-five, \* \* \*

Section 1. That sections two and fifteen of act one hundred eighty-four of the public acts of eighteen hundred and ninety-five, \* \* \* is hereby amended so as to read as follows:

§ 2. No child under fourteen years of age shall be employed in any manufacturing establishment within this State. It shall be the duty of every person employing children to keep a register, in which shall be recorded the name, birthplace, age and place of residence of every person employed by him under the age of sixteen years, and that no child shall be employed between the hours of six o'clock p. m. and seven o'clock a. m.; and it shall be unlawful for any manufacturing establishment to hire or employ any child under the age of sixteen years without there is first provided and placed on file a sworn statement made by the parent or guardian, stating the age, date and place of birth of said child, and that the child can read and write. If said child have no parent or guardian, then such statement shall be made by the child, which statement shall be kept on file by the employer, and which said register and statement shall be produced for inspection on demand made by any factory inspector appointed under this act: Provided, That in the city of Detroit all sworn statements must be made before a deputy factory inspector.

See Anno. Corp. L., Mich., p. 71, act 11.

§ 15. For the purpose of carrying out the provisions of this act the commissioner of labor is hereby authorized and required to

cause at least one annual inspection of the manufacturing establishments or factories in this State. Such inspection may be by the commissioner of labor, the deputy commissioner of labor, or such other persons as may be appointed by the commissioner of labor for the purpose of making such inspection. Such persons shall be under the control and direction of the commissioner of labor and are especially charged with the duties imposed and shall receive such compensation as shall be fixed by the commissioner of labor, not to exceed three dollars a day, together with all necessary expenses. All compensation for services and expenses provided for in this act shall be paid by the State treasurer upon the warrant of the auditor-general: Provided, That not more than fifteen thousand dollars shall be expended in such inspection in any one year: And provided, further, That the commissioner of labor shall present to the governor on or before the first day of February, eighteen hundred and ninety-six, and annually thereafter, a report of such inspection with such recommendation as may be necessary: And provided further, That in addition to the above amount allowed for expenses, there may be printed not to exceed one thousand copies of such report for the use of the labor bureau for general distribution. And all printing, binding, blanks, stationery, supplies or map work shall be done under any contract which the State now has or shall have for similar work with any party or parties, and the expense thereof shall be audited and paid for in the same manner as other State printing.

(Approved May 17, 1899.)

See Anno. Corp. L., Mich., p. 73, § 15.

#### Act No. 128.

##### Consolidation of Street Railways, etc.

AN ACT to authorize the consolidation of street railway, electric and gas light companies, or any two thereof.

#### Act No. 172.

##### Surrender of Special Railroad Charters.

AN ACT to provide for a commission to negotiate with all railroad companies, having special charters, to ascertain and report upon what terms such railroad companies will surrender their respective charters to the State and reincorporate under the general railroad laws of the State of Michigan.

#### Act No. 179.

##### Taxation of Express, Telephone and Telegraph Companies.

AN ACT to provide for the assessment and levy of taxes upon the property and business of express companies, telephone companies and telegraph companies, and

### Taxation express, telegraph and telephone companies.

the collection thereof, and to repeal act number forty-eight of the public acts of eighteen hundred ninety-nine, and all other acts under which any of the companies whose property and business is to be assessed under this act, or in any other law of this State, so far as such acts or parts of acts are inconsistent with this act, or in any way contravene the same.

Section 1. That all express companies, telephone companies and telegraph companies built, operated or doing business within the State of Michigan shall be subject to taxation as hereinafter provided.

§ 2. It shall be the duty of the president, vice-president, general manager or superintendent of every express company, telephone company and telegraph company doing business in this State to furnish the auditor-general, on or before the first Monday in April in each year, a statement under oath, and in such form as the auditor-general may prescribe, showing the following facts concerning its operations for the year ending on the last day of December next previous thereto, and shall state:

First. In case of express companies:

- a. The name or locality of the company or association.
- b. The amount of its capital stock and how much paid in upon such stock.
- c. The number of agencies or places of business of said company in this State.
- d. The amount of gross receipts on their current business in this State for the year ending December thirty-first, next preceding such report.
- e. The total number of miles over which they or it does business in this State.

And in case of telephone and telegraph companies:

a. The total number of miles owned, operated or leased within this State, with a separate showing for the number leased.

b. The total number of miles in each separate line or division thereof, together with the number of separate wires thereon, and stating the counties through which the same is carried and in which the business is conducted.

c. The total number of telegraph or telephone stations on each separate line and the total number of telegraphic or telephonic instruments in use therein, together with the total number of stations maintained.

d. The average number of telegraph or telephone poles per mile used in the construction and maintenance of such telegraph or telephone lines.

e. The number of poles and the number of miles of wire used for each telegraph or telephone exchange or line.

f. The amount of the gross receipts on their current business in this State for the year ending December thirty-first, next preceding such report.

§ 3. The auditor-general shall, on or before the fifteenth day of May in each year, make and file in his office a computation of the amount of taxes which will become due on the first day of July from each express company, telephone company and telegraph company liable to pay taxes under the provisions of this act, which computation shall be based upon the report of such express company, telephone company and telegraph company for the year ending December thirty-one, next preceding, required to be made to the auditor-general, and in case any express company, telephone company or telegraph shall fail to make such report to the auditor-general, as provided by section two of this act, then the provisions of section four of this act shall apply as fully as though such report was made and filed.

§ 4. If any express company, telephone company or telegraph company shall fail or neglect to make such report, or shall wilfully make a false report, it or they shall be liable to a penalty of one thousand dollars, and it shall be the duty of the auditor-general, and he is hereby required in case any such company incurs the penalty aforesaid, to forthwith issue his warrant for the collection of the same, in the same manner and to levy and collect the same in all respects as herein provided for the collection of taxes against such company, and the collection of such penalty shall not absolve such company from the obligation to make such report, but it shall still be the duty of such company to make the same, and a wilful violation or refusal so to do may be cause for the forfeiture of the corporate franchise, in case such company possess the same.

§ 5. Every express company, telephone company and telegraph company owning, operating or transacting an express business, telephone business or telegraph business in this State shall, on or before the first day of July in each year, pay to the State treasurer on the statement of the auditor-general, a specific tax upon the property and business of such express company, telephone company and telegraph company operating within this State, which tax shall be equal to an amount to be computed in the following manner: Upon the gross receipts of such express company derived from business within this State for the year included in the report provided for in section two of this act, three per cent. of such gross receipts; upon the gross receipts of such telephone company derived from business within this State for the year included in the report provided for in section two of this act, three per cent. of such gross receipts; and upon the gross receipts of such telegraph company derived from business within this State for the year included in the report provided for in section two of

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Annual reports.

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this act, three per cent. of such gross receipts which said specific tax may be recovered in any court of this State.

§ 6. The taxes paid under this act shall be in lieu of all other taxes upon the properties and business of said companies, except such real estate as is owned and can be conveyed by such companies under the laws of this State, and not actually occupied in the exercise of its franchises and not necessary in the proper operation of its business, but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and be subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships and municipalities within which the same may be situated.

§ 7. The State of Michigan shall have a lien upon all express companies, telephone companies and telegraph companies and their appurtenances and stock therein for all penalties, taxes and dues which may accrue to the State from the companies owning or operating the same, which lien of the State shall take precedence over all dues, judgments, assignments or decrees against said companies.

§ 8. Act number forty-eight of the public acts of eighteen hundred ninety-nine, and all other acts and parts of acts under which any of the companies whose property and business is to be assessed under this act, so far as such acts and parts of acts are inconsistent with the provisions of this act or in any way contravene the same, are hereby repealed.

(Approved June 23, 1899.)

#### **Act No. 202.**

##### **Use of Emery or Buffing Wheels.**

AN ACT to provide fans or blowers in all workshops or establishments where wheels composed partly of emery or buffing wheels or emery belts are used.

#### **Act No. 203.**

##### **Annual Reports.**

AN ACT to amend section twelve of act number two hundred thirty-two of the public acts of eighteen hundred eighty-five, \* \* \*

Section 1. That section twelve of act number two hundred thirty-two of the public acts of eighteen hundred eighty-five, \* \* \* is hereby amended so as to read as follows:

§ 12. Every such corporation carrying on its manufacturing or mercantile business within or without this State shall annually in the month of January or February, make duplicate reports for the fiscal year of such corporation, which shall state

the amount of the capital stock of the corporation, and the amount actually paid in, the amount invested in real and in personal estate, the amount of debts of the corporation, and the amount of credits, the name of each stockholder, and the number of shares held by him at the date of such reports, the name and post-office address of each officer and director of such corporation, and such other information as the secretary of State may require; which duplicate reports shall be made on suitable blanks furnished by the secretary of State on application, signed by a majority of the directors, verified by the oath of the secretary of the corporation, and deposited in the office of the secretary of State; such duplicate reports shall be so deposited within the said month of January or February. The secretary of State shall carefully examine such reports, and if, upon such examination they shall be found to comply with all the requirements of this section, he shall file one of them in his office, and shall forward the other by mail to the county clerk of the county in which the office in this State for the transaction of the business of the corporation so reported is situated, and it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office. If any of the directors of any such corporation shall wilfully neglect or refuse to make and deposit the report required by this section, within the time herein specified, they shall each be liable for all the debts of such corporation, contracted during the period of such neglect or refusal, and subject to a penalty of twenty-five dollars, and in addition thereto the sum of five dollars for each and every secular day after the first day of March in each year during the pendency of such neglect or refusal, which penalty shall be for the use and benefit of the general fund of this State. The secretary of State shall, during the last week in June in each year, report to the attorney-general in writing, the name and post-office address of each and every corporation which has failed to comply with the provisions of this section, and upon the receipt of such report it shall be the duty of the attorney-general to institute proceedings in any court of competent jurisdiction to collect said penalties, and all necessary expenses incurred by the attorney-general in such proceedings shall be audited by the board of State auditors, and paid from the general fund of the State. And in case a corporation organized and existing under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, whose property and franchises shall be sold at mortgage sale or at a private sale, or for any reason the attitude of the corporation toward the State shall be changed from that set forth in the articles of association, ex-

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cept as is provided in sections two and seventeen, it shall be the duty of the last board of directors of such corporation, within thirty days thereafter, to give written notice of such change to the secretary of State and the county clerk of the county where the office of such corporation is located, signed by a majority of such directors, which said notice shall be recorded as amendments are required to be recorded; and in case of neglect to give such notice they shall be subject to the same penalties provided in case of neglect to make annual reports, which said penalties shall be collected and applied in the same manner as in case of neglect in making annual reports. It shall be the duty of the secretary of State during the month of December, A. D., eighteen hundred ninety-nine, to cause to be mailed to every corporation subject to the provisions of act number two hundred thirty-two of the public acts of eighteen hundred eighty-five, as amended, a printed copy of this act. The neglect or refusal to file the reports required by this section to be filed shall, as to managing officers and directors, and officers and directors actually engaged in conducting the business of the corporation of which they are such officers or directors, be deemed to be wilful when the report required is not filed within the time herein limited. Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this section, the secretary of State shall cause notice of that fact to be given by mail to such corporation, and to each officer and director thereof, directed to their respective post-office addresses, and the notice to the corporation shall be accompanied by blanks upon which to make such report. The certificate of the secretary of State, or deputy secretary of the mailing of such notices and blanks shall be *prima facie* evidence in all courts and places of that fact, and that said notices and blanks were duly received by said corporation, officers and directors thereof severally. And in case of all officers and directors other than those managing or actually engaged in the conduct of the affairs and business of the corporation, the neglect or refusal to file the reports required by this section shall be deemed to be wilful, after the secretary of State shall have given the notice above provided for, if such report be not made within thirty days thereafter; Provided, Flour milling corporations shall make and deposit annual reports in the month of July or August, and for refusal or neglect to make and deposit the reports required by this section before the first day of September in each year, such corporation or any of its officers or directors shall be liable for all the debts of such corporation contracted during the period of such neglect or refusal, and shall

be immediately subject to all the penalties provided in this section. The first report under this law shall be made in the year nineteen hundred. All actions and suits, based on the neglect or refusal of the officers or directors of such corporations to make and deposit the reports required by this section shall be commenced within two years next after such neglect or refusal has occurred, and not afterwards.

(Approved May 17, 1899.)

See Anno. Corp. L., Mich., p. 14, § 4161b. 1.

## Act No. 233.

## Employment of Women and Children.

AN ACT to amend act number one hundred eighty-four of the public acts of eighteen hundred ninety-five, entitled "An act to provide for the inspection of all manufacturing establishments and workshops in this State, and to provide for the enforcement, regulation and inspection of such establishments, and the employment of women and children therein," to stand as section nineteen.

Section 1. That act number one hundred eighty-four of the public acts of eighteen hundred ninety five. \* \* \* is hereby amended by adding one section thereto to stand as section nineteen, to read as follows:

§ 19. That no room or apartment in any tenement or dwelling-house shall be used for the manufacture of coats, vests, trousers, knee pants, overalls, skirts, dresses, clocks, hats, caps, suspenders, jerseys, blouses, waists, waist-bands, underwear, neckwear, furs, fur trimmings, fur garments, shirts, hose, purses, feathers, artificial flowers, cigarettes or cigars, and no person, firm or corporation shall hire or employ any person to work in any room, apartment or in any building or parts of buildings at making, in whole or in part, any of the articles mentioned in this section, without first obtaining a written permit from the factory inspector, or one of his deputies, stating the maximum number of persons allowed to be employed therein, and that the building or part of building intended to be used for such work or business is thoroughly cleaned, sanitary and fit for occupancy for such work or business. Such permit shall not be granted until an inspection of such premises is made by the factory inspector or one of his deputies. Said permit may be revoked by the factory inspector at any time the health of the community or those so employed may require it. It shall be framed and posted in a conspicuous place in the room, or in one of the rooms to which it relates. Every person, firm, company or corporation contracting for the manufacture of any of the articles mentioned in this section, or giving out the incomplete material from which they or any of them are to be made, or to

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be wholly or partly finished, shall, before contracting for the manufacture of any of said articles, or giving out said material from which they or any of them are to be made, require the production by such contractor, person or persons of said permit from the factory inspector, as required in this section, and shall keep a written register of the names and addresses of all persons to whom such work is given to be made, or with whom they may have contracted to do the same. Such register shall be produced for inspection and a copy thereof shall be furnished on demand made by the factory inspector or one of his deputies: Provided, That nothing in this section shall be so construed as to prevent the employment of a seamstress by any family for manufacturing articles for such family use.

(Approved June 9, 1899.)

See Anno. Corp. L., Mich., p. 71, act 11, and also act of 1899, amending §§ 2 and 15 thereof.

**Act No. 245.**

**Sale of Merchandise.**

**AN ACT** to prevent misleading and dishonest representations in connection with the sale of merchandise.

Section 1. Any firm, person, corporation or association of persons or any employé of such or any of such, who in the newspapers or other periodicals of this State, or in public advertisements, or in communications intended for a large number of persons, knowingly makes or disseminates any statements or assertions of facts with respect to his, its or their business affairs, concerning the quantity or quality, the value, the price of his, its or their merchandise, or the possession of rewards, prizes or distinctions; or the motive or purpose of a sale, intended to have the appearance of an advantageous offer, which are untrue or calculated to mislead, shall be guilty of a misdemeanor.

§ 2. Any firm, person, corporation or association violating the provisions of this act upon conviction thereof, shall be liable to a fine of not less than five or more than fifty dollars and costs of prosecution.

(Approved June 15, 1899.)

**Act No. 255.**

**Unlawful Monopolies and Combinations.**

**AN ACT** to prevent trusts, monopolies and combinations of capital, skill or arts, to create or carry out restriction in trade or commerce; to limit or reduce the production, or increase or reduce the price, of merchandise or any commodity; to prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity; to fix at any standard or figure, whereby

its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption.

Section 1. That a trust is a combination of capital, skill or arts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce;
2. To limit or reduce the production, or increase or reduce the price of, merchandise or any commodity;
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity;

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State;

5. It shall hereafter be unlawful for two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, to make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the State

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where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the attorney-general in quo warranto, he may also begin any such suit in the supreme court of the State, or the circuit court of Ingham, Kent or Wayne counties, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the State.

§ 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of State shall be authorized to revoke the certificate of any such corporation or association, heretofore authorized by him to do business in this State.

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall be principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

§ 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

§ 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged

may be established by proof of its general reputation as such.

§ 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the attorney-general or any prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State, in any county where the offense is committed, or where either of the offenders reside. And it shall be the duty of the attorney-general, or the prosecuting attorney of any county on the order of the attorney-general, to prosecute for the recovery of the same. When the action is prosecuted by the attorney-general against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

§ 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employe, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not less than fifty dollars, nor more than one thousand dollars.

§ 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or

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any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

§ 12. The word "person" or "persons" whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the laws of the State of Michigan, or any other State, or any foreign country.

§ 13. All acts or parts of acts contravening the provisions of this act are hereby repealed.

(Approved June 23, 1899.)

## Act No. 257.

## Garnishment of Corporations.

AN ACT to amend section twenty-five of act number one hundred thirty-seven of the laws of one thousand eight hundred forty-nine, as amended, \* \* \* and to add two new sections thereto to stand as sections twenty-five-a and twenty-five-b.

Section 1. That section twenty-five of act number one hundred thirty-seven of the laws of one thousand eight hundred forty-nine, as amended, \* \* \* be and the same is hereby amended so as to read as follows:

§ 25. All corporations of whatsoever nature, whether foreign, domestic, municipal or otherwise, except counties, may be proceeded against as garnishees in the same manner and with like effect as individuals under the provisions of this act, and the rules of law regulating proceedings against corporations, and the summons against the garnishee in such case may be served on the president, cashier, secretary, treasurer, comptroller, or other principal officer of such corporation, and it shall be the duty of such officer so served, or the proper officer of such corporation having knowledge of the facts, to appear before the justice at the return day of such summons and answer thereto, or to answer at his option in writing, verified by his oath, before some person authorized to administer oaths, and transmit the same, by mail or otherwise, to the justice issuing said summons on or before the return day thereof, which shall be deemed a sufficient compliance with such summons; and unless he shall so appear or so answer, such corporation shall be held to be indebted to the defendant in the original suit to the amount of any judgment that may be made against such defendant in said original suit, unless within three days after the return day of such summons such corporation

shall, by such officer, show a sufficient reason to the satisfaction of the justice for not appearing to answer such summons, and the justice shall thereupon, on the third secular day, render judgment against such corporation, as against other garnishees, for the amount of such debt, and with like effect; but on such cause shown, such officer may be examined as other garnishees and with like effect, as against the corporation he represents. Such corporation or the plaintiff in such suit may appeal from such judgment rendered under this section to the circuit court of the proper county, in the same manner as appeals may be taken from any other judgment of a justice of the peace, where the liability of such corporation may be fully inquired into: Provided, That when a municipal corporation is proceeded against, as provided for in this act, judgment shall have been obtained in a court of competent jurisdiction by the plaintiff against the defendant before garnishment proceedings shall be valid against such municipal corporation: Provided, further, That it shall be necessary for the plaintiff in the action to cause to be served a notice in writing upon the clerk, treasurer or comptroller of such municipal corporation, signed by the justice of the peace before whom an action of garnishment has been commenced, stating that judgment has been rendered and is on file in favor of the plaintiff and against the defendant; that the plaintiff has filed an affidavit to that effect, and that he believes or has good reason to believe that such municipal corporation is indebted to the defendant, and has money, property, or effects in its hands belonging to such defendant, and that such municipal corporation shall hold such money, property or effects until the final disposition of the action of garnishment then pending before such justice, unless sooner released by the justice. Such municipal corporation receiving the notice herein provided shall hold any money, property or effects in its hands belonging to the defendant named in such notice until the final disposition of the action against said municipal corporation, unless sooner released by order of the justice. Such money may be released by the defendant, giving a bond in double the amount claimed to be due by the plaintiff in the action then pending, conditioned that if the plaintiff recover, the bondsman will pay into the court for the use of said plaintiff the amount of such judgment and costs, such bond to be approved by the justice. The plaintiff in such original action against the defendant shall cause to be filed with the treasurer of such municipal corporation, at the time of service of the notice aforesaid, a certified copy of the judgment, whereupon such municipal corporation shall be liable to the judgment creditor for the amount of such judgment. The filing of such judgment shall constitute a lien upon any money,

## Decisions.

property or effects that such municipal corporation may have in its hands belonging to the defendant in such action, and such municipal corporation shall be required to make disclosure the same as in garnishee proceedings, and such further action shall be had under the law now provided for in garnishment proceedings, after the service of a summons, and any reference hereafter made relative to garnishees shall include and be construed to mean municipal corporations, after a filing of a certified copy of the judgment, as hereinbefore provided: Provided, further, That when such corporation shall wish to appeal, in cases where they have not answered as garnishees, they shall, in addition to the other requirements of law, file with the justice a full and complete answer, in writing, as such garnishees, verified by the oath of one of the officers having knowledge of the facts, which said

officer shall also answer under oath all questions put to him by such justice relating to the matter of such suit, and whereupon the said justice shall, within the time required for making such return of such appeal, at the option of the plaintiff, either make such return or set aside the judgment rendered against such corporation, by entry thereon upon his docket and across the face of such judgment, in which event said corporation, if they have not already paid all costs in such suit, shall be liable for the same.

See Anno. Corp. L., Mich., p. 44, § 8086.

§ 25a. Jurisdiction is hereby conferred upon justices of the peace, to proceed against municipal corporations, except counties, by garnishment.

§ 25b. All acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

(Approved June 23, 1899.)

## DECISIONS.

(Include those contained in 78 N. W. Rep.)

**Sale of stock.**

A tender of stocks by the seller is insufficient unless the seller is able to deliver the specific stocks sold. In order to keep good a tender of stock by the seller, he must be able and willing at all times between the tender and the trial to deliver the stock tendered, even though the tender was refused and no demand was afterwards made for the stock. A seller may be able and willing to deliver at any time the specific stock sold, though it is pledged. *Ortmann v. Fletcher*, (Mich.); s. c., 76 N. W. Rep. 63.

**Liability of stockholders; imposed by other State, enforcement.**

Gen. Stats., Kan., § 1192, provides that, if an execution against certain corporations shall be returned unsatisfied, execution may be issued against any stockholder for an amount equal to the stock held by him, on the order of the court in which the action shall have been brought, a plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment. Held, that though the first of the remedies can only be enforced in Kansas, the latter may be enforced as a transitory action in any State when personal service can be had on the shareholders, to the extent of the stock owned by the stockholders, as limited by the Kansas Const., art. XII, § 2. *Western Nat. Bk. v. Lawrence*, (Mich.); s. c., 76 N. W. Rep. 105.

**Liability of stockholders for overvaluation.**

Creditors of an insolvent corporation cannot compel holders of fully paid-up stock to

pay the difference between its par value and the value of property conveyed in payment of it, in the absence of fraud or recklessness in the valuation of the property. *Graves v. Brooks*, (Mich.); s. c., 75 N. W. Rep. 932.

**Foreign corporations; payment of franchise fee.**

A duly organized foreign corporation, having all the proper officers, doing business and keeping its books as a corporation, is a de jure corporation, and its validity is not affected by public acts 1893, p. 82, requiring foreign corporations doing business in the State to pay a franchise fee, and making void all contracts of one not doing so. *Rough v. Breitung*, (Mich.); s. c., 75 N. W. Rep. 147.

**Idem; what contracts void.**

A contract between the president of a foreign running corporation and the defendant, transferred to the defendant all the property of the corporation, for which the defendant was to pay all corporate debts and give the stockholders a certain amount of mortgage bonds for their stock. It was held not a contract by the stockholders, but a corporate one, for sale of corporate property, and void under the act above referred to, the corporation not having paid the franchise fee required. Title to the corporate property being in the corporation, the stockholders, whether acting individually or collectively, cannot dispose of the same, which must be done in the manner and by the agencies provided by the charter. A corporate contract being made void by law,

## Decisions.

so also is a joint contract of all the stockholders designed to accomplish the same purpose. *Id.*

**Extension of corporate existence; amendment of articles.**

A corporation amended its articles, extending the period of its existence, at a time when it had no legal right to make such an amendment. After a statute was enacted conferring such authority, it adopted amended articles, whose preamble made no reference to the period of existence, but the former article of amendment in reference thereto was retained with the articles as last amended and filed. It was held that the period of existence was extended by the latter amendment. *People ex rel. Ward v. Green*, (Mich.); s. c., 74 N. W. Rep. 714.

Howell's Anno. Stat., § 4161d2; Anno. Corp. Laws, Mich., p. 19.

**Appointment of receiver.**

A bill by the owner of one-eighth of the stock of a corporation, praying a receiver, alleged that defendant controlled a majority of the stock, loaned the profits in his own name, and refused to declare dividends until threatened with suit, and then withheld dividends coming to complainant; that no meetings of the directors had been held, nor reports of the condition of the company filed, as required by law, and that such conditions had not been made known to the stockholders; and that no books of the company were kept, except a private memorandum of defendant, which was inaccessible to stockholders. It was held that a receiver would not be appointed, it not being shown that other stockholders were dissatisfied with the management, and there being no allegation of insolvency, or that defendant was irresponsible, and it appearing that complainant was in possession of most of the property of the corporation, and that a dispute over unsettled claims was the mainspring of the litigation. *Rumney v. Detroit & M. Cattle Co.*, (Mich.); s. c., 74 N. W. Rep. 1043.

**Action for an accounting.**

This chapter does not authorize a general creditor to intervene in an action by a stockholder against the corporation and other stockholders for an accounting. *Smith v. Geo. T. Smith Mfg. Co.*, (Mich.); s. c., 77 N. W. Rep. 308.

Howell's Anno. Stats., ch. 281; Anno. Corp. Laws, Mich., p. 48.

**Corporate names.**

After the organization of a corporation as the "Lamb Knit-Goods Company" to which one Lamb transferred the right to use his name, another corporation, engaged in the same line of business, will be restrained from using the name "Lamb Glove & Mit-

ten Company," though located in another town, where the business is carried on largely through agents, and it appears that the confusion has resulted from using names so similar as to mislead. *Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co.*, 78 N. W. Rep. 1072.

Howell's Anno. Stats., § 4161a; Anno. Corp. Laws, Mich., p. 10.

**Assignment of assets by agent.**

Where the stockholders of a corporation have no meetings, and permit an agent to manage the business in every particular, he has authority to execute a conveyance of all the assets of the corporation in trust for the benefit of creditors. A conveyance of all the assets of a corporation in trust, authorizing the grantee to take possession and sell and apply the proceeds to the payment of debts is an assignment for creditors and not a mortgage. *Coney v. Collins*, 78 N. W. Rep. 555.

**Foreclosure of lien on stock; jurisdiction.**

Equity has no jurisdiction to decree a foreclosure of a lien on the stock of the members of a corporation for debts due from them to the corporation, in a proceeding brought solely for that purpose. Such jurisdiction is not acquired by the fact that an accounting is also asked, where the claim is one that a court of law may deal with as an open account. *Aldine Mfg. Co. v. Phillips*, (Mich.); s. c., 76 N. W. Rep. 371.

Howell's Anno. Stats., § 4161b5; Anno. Corp. Laws, Mich., p. 15.

**Powers of officers to contract.**

A person negotiating with the officers of a corporation for employment agreed with them on the terms, but was told that the contract must be approved by the directors or stockholders, who would meet on the first of the coming month. Thereafter, on receipt of a letter saying that "we have considered the matter of entering into an agreement with you, and have decided to allow our contract to remain in force," and signed by the secretary in the corporate name, he made arrangements to perform the contract, and incurred obligations thereby. The by-laws required all contracts to be signed by the president and countersigned by the secretary, and no meeting was in fact held; and when the directors did meet they disapproved the contract. No previous dealing had been had between such person and the corporation, and he did not know of the secretary's exercise of such general powers in other dealings. Held, that such person was bound to inquire and know the limitations of authority imposed by the charter and by-laws on the secretary, and hence he could not recover on the contract as being within the apparent scope of the secretary's authority. *Hallenbeck v. Powers & Walker Casket Co.*, (Mich.); s. c., 76 N. W. Rep. 119.





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MINNESOTA.

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# MINNESOTA.

## CONSTITUTION OF MINNESOTA — 1858.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Bill of Rights.

Sec. 11. Laws impairing the obligation of contracts, prohibited.  
13. Private property taken for public use to have just compensation.

#### ARTICLE IV.

##### Legislative Department.

Sec. 32. In regard to railroads.  
33. The legislature is prohibited from enacting special or private laws in the following cases.  
34. General laws to be uniform in their operation.  
35. Combinations to influence the markets for food products declared a criminal conspiracy.

#### ARTICLE IX.

##### Finances of the State, Banks and Banking.

Sec. 3. Laws shall be made taxing all moneys, etc.  
4. Laws shall be passed for taxing notes, bills, etc.  
10. The State shall never give or loan its credit.  
13. The legislature may pass a general banking law.

#### ARTICLE X.

##### Corporations Having no Banking Privileges.

Sec. 1. Corporations defined.  
2. They shall not be formed under special acts.  
3. Stockholders shall be liable for what.  
4. Lands taken for public way shall have a fair compensation.

#### ARTICLE I.

##### Bill of Rights.

§ 11. No \* \* \* law impairing the obligation of contracts, shall ever be passed,  
\* \* \*

§ 13. Private property shall not be taken for public use without just compensation therefor, first paid or secured.

See art. X, § 4. Corporations empowered to take property. § 2595.

#### ARTICLE IV.

##### Legislative Department.

§ 32. Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this State, or operating its road therein, or which may be hereafter organized, shall in lieu of all other taxes and assessments upon their real estate, roads, rolling stock and other personal property at and during the time and periods therein specified, pay into the treasury of this State a certain percentage therein mentioned of the gross earnings of such railroad companies now existing or hereafter organized, shall before the same shall take effect or be in force, be submitted to a vote of the people of the State, and be adopted and ratified by a majority of the electors of the State voting at the election at which the same shall be submitted to them.

§ 33. The legislature is prohibited from enacting any special or private laws in the following cases: \* \* \*

7th. For granting corporate powers or privileges, except to cities.

10th. For granting to any individual, association or corporation, except municipal, any special or exclusive privilege, immunity or franchise whatever.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.

See art. X, § 2; art. IX, § 13.

[A corporation is not estopped, by acts of individual members or officers in procuring the passage of a statute, from objecting to its validity. *Boon Co. v. Prince*, 34 Minn. 78; s. c., 24 N. W. Rep. 361.]

§ 34. The legislature shall provide general laws for the transaction of any business that may be prohibited by section (1)\* of this amendment, and all such laws shall be uniform in their operation throughout the State.

§ 35. Any combination of persons, either as individuals, or as members or officers

State finances; corporations — Const., Art. ix, §§ 3, 4, 10, 13; Art. x, §§ 1-3.

of any corporation, to monopolize the markets for food products in this State, or to interfere with, or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy, and shall be punished in such manner as the legislature may provide.

See §§ 6955-6957, 6957a.

#### ARTICLE IX.

##### Finances of the State, Banks and Banking.

§ 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, \* \* \*

Property subject to taxation. § 1508.

§ 4. Laws shall be passed for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects or dues of every description, of all banks, and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

§ 10. The credit of the State shall never be given or loaned in aid of any individual, association or corporation. \* \* \*

§ 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz.:

First. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description.

Second. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security in United States stock or State stocks for the redemption of the same in specie; and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent, or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third. The stockholders in any corporation and joint-stock association for banking purposes issuing bank notes shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth. Any general banking law which may be passed in accordance with this article, shall provide for recording the names

of all stockholders in such corporations, the amount of stock held by each, the time of transfer, and to whom transferred.

See art. IV, § 33.

#### ARTICLE X.

##### Corporations Having no Banking Privileges.

Section 1. The term "corporations," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges; and all corporations shall have the right to sue, and shall be liable to be sued, in all courts in like manner as natural persons.

The term "person." § 1511.

§ 2. No corporation shall be formed under special acts, except for municipal purposes.

See art. IV, § 33; Gen. Stat., § 2794.

[See *McRoberts v. Washburne*, 10 Minn. 23; *Morton v. Power*, 33 Id. 521; s. c., 24 N. W. Rep. 494; *R. R. Co. v. Parcher*, 14 Minn. 297; *Ames v. R. R. Co.*, 21 Id. 241; *Cotton v. Boom Co.*, 22 Id. 372; *State v. Clark*, 23 id. 422; *Ins. Co. v. Allis*, 24 id. 75; *Green v. Boom Co.*, 35 id. 155, for special acts which were held to be in conflict with above section.]

§ 3. Each stockholder in any corporation, (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him.

Individual liability. § 2600, and note; see §§ 5889 et seq. Enforcement by assignees and receivers. §§ 5911a-5911m.

[Articles of incorporation construed, and held that a corporation was not organized for a manufacturing business only, and that its stockholders were liable, to the amount of their stock, for the corporate debts. *Anchor Co. v. Electric Co.*, 63 N. W. Rep. 1109.

Above section does not affect the power of the legislature to make stockholders individually liable in a larger amount. *Allen v. Walsh*, 25 Minn. 543.

It does not merely make a stockholder liable for his stock at its face value, but imposes a liability to the amount of stock held, in addition to the liability for the stock. *Willis v. Sanitation Co.*, 50 N. W. Rep. 1110.

The section is self-executing. Id.

Stockholders cannot exempt themselves from this constitutional rule or personal liability by organizing, in form, as a manufacturing corporation, when it is evident that the real object of the organization is the carrying on of business wholly foreign to manufacturing. *State v. Mfg. Co.*, 40 Minn. 218; s. c., 41 N. W. Rep. 1020; *Mohr v. Minn. El. Co.*, 40 Minn. 343; s. c., 41 N. W. Rep. 1074.

The exception in favor of manufacturing corporations embraces only those organized to carry on an exclusively manufacturing business; and if the purposes, as stated in the articles, are to carry on other kinds of business also, the fact that the corporation never actually engaged in such other kinds of business will not bring it within the exception referred to. *Arthur v. Willis*, 44 Minn. 409; s. c., 46 N. W. Rep. 851.

A corporation was organized for "the manufacture and sale of lime," \* \* \* together with the buying and selling of lime, hair, sand, cement,

## MINNESOTA.

## Eminent Domain — Const., Art. x, § 4.

and like articles." The only business actually engaged in was the manufacture and sale of lime. Held, that the stockholders were liable for its debts under above section. *Densmore v. Shepard*, 46 Minn. 54; s. c., 48 N. W. Rep. 528, 681.

Stockholders of an insolvent trading corporation are severally liable for its debts to an amount equal to the face value of the stock though severally held. Liability is not limited to a pro rata share of the debts equal to their share of the whole stock. *Bank v. Plow Co.*, 58 Minn. 167; s. c., 59 N. W. Rep. 997.

A distilling company operating a distillery and buying and selling liquor held not an exclusively manufacturing company, and that its stockholders were liable for all debts to the amount of their stock. *Barrel Co. v. Distilling Co.*, 64 N. W. Rep. 1143.

The liability of a stockholder of a bank who has transferred his shares is limited to the debts created before the transfer. *Harper v. Carroll*, 64 N. W. Rep. 145.

Laws 1889, chapter 30, includes stockholders who are liable for the debts of a corporation which has been released by debtor in insolvency proceedings, under Const., art. X, § 3. *Willis v. Sanitation Co.*, 50 N. W. Rep. 1110.

Limitation of actions to enforce liability of stockholders. *Hospes v. Mfg. & Car Co.*, 50 N. W. Rep. 1117.

The mining of iron ore held a "mechanical business" within meaning of above section. *Cowling v. Zenith Iron Co.*, 68 N. W. Rep. 48.

A corporation organized to manufacture and deal in fertilizers held not organized for manufacturing exclusively, so as to exempt its stockholders under above section. *Bank v. Mfg. Co.*, 69 N. W. Rep. 217.

After a corporation assigns for the benefit of its creditors, a simple contract creditor may enforce the constitutional liability of the stockholders. *Sturtevant-Larrabee Co. v. Mast*, 69 N. W. Rep. 324.

Articles of defendant corporation construed, and held it was not organized for an exclusively mechanical business so as to exempt its stockholders from double liability. *Anderson v. Anderson Iron Co.*, 68 N. W. Rep. 49.

Fact that a manufacturing corporation engaged in some business not authorized by its articles did not render its stockholders liable for corporate debts. *Bank v. Frisk-Turner Co.*, 74 Minn. 418; 74 N. W. Rep. 160.

A corporation for the manufacture and sale of clothing, and for other business necessary thereto, held a corporation for manufacturing under above section. Id.

Where a corporation is created and organized under a special act, passed subsequent to the above section of the Constitution, its stockholders are subject to the liabilities imposed, although it was in existence under another act prior to the enactment of such section. Having accepted the provisions of the special act, and acted thereunder, the stockholder cannot assert the unconstitutionality of the act. *Gardner v. Minneapolis & St. L. Ry. Co.*, 76 N. W. Rep. 282.

A corporation organized for the purpose of "producing and creating water, steam and other motive power, and all transmission and application of the same for manufacturing and lawful business," is organized for the carrying on exclusively of a manufacturing business, and its stockholders are subject to the liability imposed by this section. *Cuyler v. City Power Co.*, 76 N. W. Rep. 948.]

§ 4. Lands may be taken for public way, for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and the damages arising from the taking of the same; but all corporations being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions or manufactures on equal and reasonable terms.

See art. I, § 13. Corporations empowered to take property. § 2595.

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Taxes; corporations, organization — Gen. Stats., §§ 1508, 1510, 1511, 2593.

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## GENERAL STATUTES OF MINNESOTA -- 1894.

[The following sections of the Statutes of Minnesota follow the section numbering of the General Statutes of 1894, as prepared by Henry B. Wenzell, and published by the West Publishing Co., of St. Paul, Minn. At the end of the section we have referred to Kelley's Statutes and the section of the laws from which the section was revised. The annotations include those contained in 79 N. W. Rep.]

### CHAPTER XI.

#### Taxes.

Sec. 1508. Property subject to taxation.

1510. Personal property defined.

1511. "Person" includes corporation.

§ 1508. All real and personal property in this State, and all personal property of persons residing therein, the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, and of all bankers; except such as is herein-after expressly excepted, is subject to taxation, and such property, or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner prescribed by this act; Provided, That railroad, insurance and telegraph companies, shall be taxed in such manner as now is or may be hereafter fixed by law. (Kelley's Stats., § 1382; G. S. 1878, ch. 11, § 1; 1878, ch. 1, § 1.)

See Const., art. IX, §§ 3, 4. Stock deemed personal property. § 2799.

[A railroad corporation is deemed to reside in any county in which it has an office, agent or place of business. Schoch v. R. R. Co., 55 Minn. 479; s. c., 57 N. W. Rep. 208.

A corporation is taxable where its principal place of business is situated, its power exercised, its plans formed, its meetings held and its seal kept. State v. Boom Co., 49 Minn. 450; s. c., 52 N. W. Rep. 44.

A personal tax assessed against a corporation cannot be collected against the receiver personally. State v. Red River Valley Elevator Co., 72 N. W. Rep. 60.

Personal property of a corporation is assessable at the places at which it was assessable before a receiver was appointed, without reference to the residence of the latter. Id.]

§ 1510. Personal property shall, for the purposes of taxation, be construed to include \* \* \* all public stocks and securities, all stock in turnpikes, railroads, canals and other corporations (except national banks), out of the State, owned by inhabit-

ants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State; \* \* \* all shares of stock in any bank organized or that may be organized under any law of the United States, or of this State; \* \* \* and all such improvements upon lands the title to which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. (Kelley's Stats., § 1382; G. S. 1878, ch. 11, § 3; 1878, ch. 1, § 3.)

§ 1511. \* \* \* The term "person," whenever used in this act, shall be construed to include firm, company or corporation. (Kelley's Stats., § 1385; G. S. 1878, ch. 11, § 4; 1878, ch. 1, § 4.)

The term "corporations." Const., art. X, § 1.

### CHAPTER XXXIV.

#### Corporations.

- Tit. 1. Corporations empowered to take private property; railroads, etc.
- 2. Corporations for pecuniary profit other than those empowered to take private property for public uses.
- 8. General provisions.

#### TITLE I. CORPORATIONS EMPOWERED TO TAKE PRIVATE PROPERTY FOR PUBLIC USES.

[Note.—The following sections of Gen. Stat. 1866, ch. 34, tit. 1, are made applicable to all corporations organized for pecuniary profit by § 2796 of tit. II of Gen. Stat. 1866, ch. 34, post.]

- Sec. 2593. Manner of organization.
- 2594. Articles of incorporation to contain what.
- 2595. General powers.
- 2598. Statement of financial condition.
- 2599. Transfer of shares.
- 2600. Individual liability.
- 2601. Same; levy on private property.
- 2602. Same.
- 2738. General capital stock; change of articles.

#### Organization, manner of.

§ 2593. They shall organize by adopting and signing articles of incorporation, which

## Articles of incorporation; powers — Gen. Stats., §§ 2594, 2595.

shall be recorded in the office of the register of deeds of the county where the principal place of business is to be, and also in the office of the secretary of State, in books kept for such purposes. (G. S. 1866, ch. 34, § 2; Kelley's Stats., § 2450.)

See § 2796, which makes this section applicable to all corporations organized for pecuniary profit under tit. II of ch. 34 of Gen. Stat. 1866.

[A de facto corporation exists where there is a law authorizing the creation of corporations, an attempt to organize pursuant to it, and user thereunder. A substantial compliance with the law is not necessary to constitute the body a de facto corporation. *Finnegan v. Noerenberg*, 52 Minn. 239; s. c., 53 N. W. Rep. 1150.

Promoters of the proposed corporation, who abandoned purpose of its organization, held individually liable for contracts made by it pending the proposed organization. *Mfg. Co. v. Schlick*, 64 N. W. Rep. 826; *Same v. Wright*, Id. 827.

Persons entering into articles of association with intention of incorporating, but failing to perfect such incorporation, are to be held individually liable upon contract. *Johnson v. Corser*, 34 Minn. 355; s. c., 25 N. W. Rep. 799.]

## Articles of incorporation to contain what.

§ 2594. Said articles shall contain:

First. The name of the corporation, the general nature of the business, and the principal place, if any, of the transacting the same.

Second. The time of commencement and the period of continuance of said corporation.

Third. The amount of capital stock of said corporation, and how to be paid in.

Fourth. The highest amount of indebtedness or liability to which said corporation shall at any time be subject.

Fifth. The names and places of residence of the persons forming such association for incorporation.

Sixth. The names of the first board of directors, and in what officers or persons the government of the corporation and the management of its affairs shall be vested, and when the same are elected.

Seventh. The number and amount of the shares in the capital stock of said corporation.

And shall be published for four successive weeks in some newspaper printed and published at the capital of the State, or in the county where such corporation is organized: Provided, That in cases where articles of incorporation have been adopted and signed, or may hereafter be adopted and signed, as provided in sections two and three of this chapter, and filed for record in the office of the secretary of State, the publication of the same for one week in some newspaper printed and published at the capital of the State, or in some newspaper

printed and published in the county where such corporation is organized, shall be a sufficient publication under this chapter; and upon filing an affidavit of proof of such publication in the office of the secretary of State, the persons named in such articles shall thereupon become a corporation, with the authority and powers in this chapter provided and intended. (G. S. 1866, ch. 34, § 3; Kelley's Stats., § 2451.)

See § 2796, which makes this section applicable to corporations organized for pecuniary profit under the following title.

## General powers.

§ 2595. When articles are filed, recorded and published as aforesaid, the persons named as corporators therein become a body corporate, and are authorized to proceed to carry into effect the objects set forth in said articles, in accordance with the provisions of this title, and shall have perpetual succession, sue and be sued by its corporate name, have a common seal, which it may alter at pleasure, may render the interest of its stockholders transferable, establish by-laws, and make all rules and regulations deemed expedient for the management of its affairs, in accordance with law, and not incompatible with an honest purpose, and whenever, after the adoption, filing, publication and recording of the articles of incorporation, as provided for in section three (§ 2594) of said chapter, and the creation thereby of a body corporate, the said corporation so created shall resolve to alter, modify or change any of its articles of incorporation, such corporation may, by resolution duly passed at any regular meeting of the directors thereof, adopt a new article or articles, altering, modifying or changing any of the original articles of incorporation; Provided, Such alteration, modification or change shall only relate to and affect the name of such incorporation, the general nature of its business, and the principal place of transacting the same, the amount of its capital stock, and how to be paid in, the highest amount of indebtedness or liability to which said corporation shall at any time be subject, and the number and amount of the shares of its capital stock. And also the number of directors, their term of office and the manner of their election;

And provided further, That no such new and amended articles of incorporation shall be operative or valid to alter, modify or change such original articles of incorporation until the same shall be filed, published and recorded in the same manner and with like formalities that the original articles of incorporation are now required to be filed, published and recorded; and when so adopted, the said amended articles of incorporation shall be substituted for and take the place of the original articles of incor-

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Transfer of shares; liability — Gen. Stats., §§ 2598–2600.

poration so amended. (G. S. 1866, ch. 34, § 4; Kelley's Stats., § 2458.)

See Const., art. X, § 4; id., art. I, § 13.

#### Statement of financial condition.

§ 2598. A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company, in a general way, shall also be kept posted up in like manner, which statement shall be corrected as often as any material change takes place in relation to any part of the subject-matter of such statement. (G. S. 1866, ch. 34.)

See §§ 2800, 2818.

#### Transfer of shares.

§ 2599. The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so far as to show the names of the persons by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer. The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. (G. S. 1866, ch. 34, § 8; Kelley's Stats., § 2454.)

Stock transferable only in such form as directors prescribe. § 2799. Directors shall keep a record. § 2800. Books must be open to inspection. § 2818. Transfer agents must exhibit transfer-books and list of stockholders. § 3429e.

If one offering stock for sale, falsely and fraudulently representing that the corporation is not in debt, is making profits, and thereby induces another to purchase, he is liable for the damages, although the truth might have been ascertained by investigation of affairs of the corporation. Redding v. Wright, 49 Minn. 322; s. c., 51 N. W. Rep. 1056.

One holding shares of stock as collateral security does not become a subscriber, nor is the pledgor divested of his rights as such. McMullon v. Dickinson, 65 N. W. Rep. 661.

A transferee of stock held liable on a subscription, though the transfer on the corporate books was not complete. Oswald v. Minn. Times Co., 68 N. W. Rep. 15.

To constitute one a stockholder, it is not necessary that a certificate of stock be issued. Holland v. Duluth Iron M. & D. Co., 68 N. W. Rep. 50.

The fact that a person's name appears on the stock-book as a stockholder held to create a presumption that he was a stockholder, and hence the book is admissible to show that fact. Id.

An owner of stock can transfer it, though the transfer is not entered on the books of the corporation. Inv. Co. v. St. Paul, etc., Co., 70 N. W. Rep. 1079.

Right of equitable owner of stock to have transfer of the same entered on the books of the corporation determined. Id.

A pledgee of stock, to cancel stock and reissue it to third person, held to have converted the same. Upham v. Barber, 68 N. W. Rep. 42.]

#### Individual liability.

§ 2600. The private property of each stockholder in any corporation formed as herein provided is liable for corporate debts in the following cases:

First. For all unpaid instalments on stock owned by him, or transferred for the purpose of defrauding creditors.

Second. For a failure by the corporation to comply substantially with the provisions aforesaid as to organization and publicity.

Third. When he personally violates any of the provisions of this title in the transaction of any business of the corporation as officer, director or member thereof, or is guilty of any fraud, unfaithfulness or dishonesty in the discharge of any official duty. (G. S. 1866, ch. 34, § 9; Kelley's Stats., § 2455.)

Stockholder in corporation liable for. Const., art. X, § 3, and note. Penalty for fraud. § 6446. Liability of stockholders. § 2822. Liability of directors. § 2825. Executors not personally liable. § 3419. Directors may call in installments. § 2815. Neglect to pay installments. § 3413. Enforcement of liability by assignees and receivers. §§ 3911a-3911m. (L. 1899, ch. 272.)

[A judgment against the corporation and others jointly, for the recovery of money is a corporate debt which may be enforced against stockholders individually liable. Frost v. Investment Co., 57 Minn. 325; s. c., 59 N. W. Rep. 308.

The stockholder's statutory liability for corporate debts extends to those contracted before he acquired his stock, and may be enforced by action, although the corporation has assigned for the benefit of its creditors, and although insolvency proceedings are still pending. Olson v. Cook, 57 Minn. 552; s. c., 59 N. W. Rep. 635.

Purchasers of stock assume liability for previous sales and future debts of the corporation. Bank v. Plow Co., 58 Minn. 167; s. c., 59 N. W. Rep. 997.

Construction of general statute 1878, ch. 34, § 9 (G. S., 1894, § 2455), making stockholders liable for corporate debts in case of a failure by the corporation to comply substantially with certain provisions as to organization and publicity. Bank v. Harper, 63 N. W. Rep. 1079; Bank v. Loan Co., Id.

Capital stock contributed or agreed to be contributed is, in equity, a trust fund charged with the payment of corporate debts, and no by-law or resolution of the stockholders can affect the

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## Liability of directors and stockholders — Gen. Stats., § 2600.

rights of creditors. *Farnsworth v. Robbins*, 36 Minn. 369; s. c., 31 N. W. Rep. 349.

And in an action in behalf of creditors to recover upon a subscription to the capital stock, the fact that all the authorized capital stock may not have been taken is not available in defense. *Id.*

The right of creditors to compel the holders of "bonus" stock in an insolvent corporation to pay for it, contrary to their agreement with the corporation, rests not on the ground of implied contract, nor on the "trust fund" doctrine, but on the ground of fraud. Therefore, payment of such stock can never be enforced in favor of one who became a creditor before it was issued. *Hospes v. Mfg. & Car Co.*, 50 N. W. Rep. 1117.

Where a creditor asks to enforce payment of "bonus" stock from the holder, he must show equities entitling him to such relief. *Id.*

Where stock is issued as fully paid up, without, in fact, being so, equity will hold the shareholders liable for the amount not actually paid, except as to creditors who have dealt with the corporation with full knowledge of the fictitious arrangement. *Bank v. Mining Co.*, 42 Minn. 327; s. c., 44 N. W. Rep. 198.

Where a corporation issues new shares after the claim of a creditor arose, he cannot insist on contribution from the holders thereof. *Id.*

A complaint in an action to enforce stockholders' liability held insufficient as to any single stockholder for failure to show that any one defendant was a stockholder when the debt was contracted or at any subsequent time. *Trust Co. v. Loan & Trust Co.*, 65 N. W. Rep. 632.

When the corporation contracts a debt, the stockholder cannot be held a cocontractor therewith, so as to merge the right to proceed against the stockholder, to enforce his individual liability, in a judgment recovered against the corporation alone on such contract. *Dodge v. Roofing Co.*, 16 Minn. 368.

Under sections 2455-2457, a creditor may join in his action one or more, without joining all, of the stockholders subject to such liability, as such action is not intended to reach all the assets of the corporation, and all liabilities for its debts. *Bank v. Mfg. Co.*, 34 Minn. 323; s. c., 25 N. W. Rep. 639.

While affairs of an insolvent corporation are in the hands of a receiver, a creditor cannot maintain an action in his own behalf against a stockholder to recover for stock held by the latter, but never paid for. *Bank v. Mfg. & Car Co.*, 51 N. W. Rep. 119; *Mfg. Co. v. Langdon*, 44 Minn. 37; s. c., 46 N. W. Rep. 310.

Extent of individual liability of shareholders in a foreign corporation must be determined by the laws of the State of its creation. *Bank v. Mining Co.*, 42 Minn. 327; s. c., 44 N. W. Rep. 198.

A creditor of an insolvent foreign corporation may enforce his claim against the unpaid balances of subscriptions. *Rule v. Stove & Grate Co.*, 67 N. W. Rep. 60.

To constitute one a stockholder, it is not necessary that a certificate of stock be issued. *Holland v. Duluth Iron M. & D. Co.*, 68 N. W. Rep. 50. The stockholders of a corporation are concluded in an action to enforce their liability, by a previous default judgment obtained against the corporation. *Id.*

Transferee of stock held liable on a subscription, though the transfer on the corporate books was not complete. *Oswald v. Minn. Times Co.*, 68 N. W. Rep. 15.

An agreement with subscribers that for each share paid for a certificate of two or more shares shall be given, is void. *Rogers v. Gross*, 69 N. W. Rep. 894.

A stockholder held to have lost his right to rescind as against creditors of a corporation. *Olson v. State Bank*, 89 N. W. Rep. 904.

Findings of the court in an action to enforce liability of stockholders of insolvent corporation, held sufficient. *Bank v. Mfg. Co.*, 69 N. W. Rep. 217.

Evidence held sufficient to sustain a finding that defendant was a stockholder of an insolvent corporation. *Holland v. Duluth Iron M. & D. Co.*, 68 N. W. Rep. 50.

The fact that a person's name appears on the stock-book as a stockholder, held to create a pre-

sumption that he was a stockholder, and the book is hence admissible to show that fact. *Id.*

The liability of stockholders for corporate debts extends to debts due to stockholders as creditors. *Oswald v. Minneapolis Times Co.*, 68 N. W. Rep. 15.

In an action by a judgment creditor to enforce the stockholders' liability, the judgment against the corporation is conclusive on the stockholders. *Id.*

Finding held insufficient to show that the claim of creditors of an insolvent corporation were contracted in excess of the limit of corporate indebtedness. *Id.*

Evidence held inadmissible to show a verbal agreement between the stockholders that they should not be individually liable for corporate debts. *Id.*

Where a corporation, as assigned for the benefit of creditors, held a simple contract creditor may enforce the stockholder's liability (G. S. 1894, ch. 76) for such of the debts as may remain unpaid after the assets shall have been administered by the assignee. *Minneapolis Paper Co. v. Swinburne Co.*, 69 N. W. Rep. 144.

Creditors are entitled to recover receiver's fees in addition to their debts and statutory costs and disbursements, not exceeding the amount of the stockholders' statutory liability. *Harper v. Carroll*, 69 N. W. Rep. 610, 1069.

In a judgment against stockholders of an insolvent corporation it is proper to provide that on collection in full, a judgment of contribution may be entered between the stockholders. *Id.*

In an action under G. S. 1894, ch. 76, to enforce the double liability of stockholders of an insolvent corporation, creditors are entitled to judgment against such stockholder for the full amount of his statutory liability. *Id.*

Rights of stockholders in an action to enforce the statutory liability where there are non-resident stockholders over whom the court has no jurisdiction, determined. *Id.*

Rule established as to the issue of executions against stockholders of an insolvent corporation, where the aggregate amount of the judgment on their stock liability exceeds the aggregate amount to be satisfied by the same. *Id.*

The court may, on application, stay the docketing of a judgment against a stockholder of insolvent corporation on giving bond to pay the assessments on the judgment. *Id.*

Where a stockholder of an insolvent corporation is also a creditor, it is proper to render judgment against him for his statutory liability and to declare it a lien on the amount due him. *Id.*

One becoming a stockholder in a de facto corporation held estopped to question its existence. *Id.*

Liability of stockholders on insolvency of a corporation determined. *Rogers v. Gross*, 69 N. W. Rep. 894.

Stockholders who have accepted unpaid certificates held to have no equitable rights as against the subscribers who have paid for their stock. *Id.*

A corporation held chargeable with notice of claim of defendant corporation to the corporate stock in controversy before the creation of the debt for which it claimed a lien. *Investment Co. v. St. Paul, etc., Co.*, 70 N. W. Rep. 1079.

As to liability of stockholders, necessary averments by creditors, etc., see *Gunnison v. U. S. Inv. Co.*, 73 N. W. Rep. 149; *In re Receivership of Northern Trust Co.*, *Id.* 173; *Lincoln v. Carroll*, *Id.*

## Liability of stockholders.

The liability of stockholders in this State for the debts of the corporation is several, and a judgment against a part of them does not have the effect to release the others. A stockholder of a corporation by the act of becoming such assumes the liability for the corporate debts imposed by law, and the obligation thus raised is not penal or statutory in its character, but purely contractual, containing all the elements of a contract and is to be enforced as such. *Hanson v. Davison*, 76 N. W. Rep. 254.

## Enforcement of liability; increase of capital — Gen. Stats., §§ 2601, 2602, 2738.

In an action to enforce stockholders' liability, the court will not determine the liability of certain stockholders on their personal guaranty of the corporate bonds. Where two stockholders become personal sureties for payment of corporate bonds, the liability was not a corporate asset, to be exhausted before recourse to other stockholders. *Winthrop Nat. Bk. v. Minneapolis Term. Elevator Co.*, 79 N. W. Rep. 1010.

The stockholders in a corporation guaranteed its paper, and on insolvency took it up, and one paid more than his share. He cannot, in his own name and for his sole use, recover on a claim against the corporation for the full amount of the note, on the ground that the other members were insolvent, and that he was responsible for the full amount. *Helm v. Smith Fee Co.*, 79 N. W. Rep. 313.

An executor does not make himself personally liable on corporate stock by having it transferred to himself as executor pursuant to a direction of the will. *Markell v. Ray*, 77 N. W. Rep. 788.

When the corporate books show that shares were held by two persons, such persons are tenants in common, and neither can be held for more than one-half of the stockholder's liability. *Id.*

A creditor who has dealt with a corporation de facto in its corporate name and capacity, and given credit to it, and not to its members or stockholders, cannot, in the absence of fraud, charge them, as partners, with the debts of the corporation. *Richards v. Minnesota Sav. Bank*, 77 N. W. Rep. 822.

**Offset and counterclaim.**

In an action brought by an assignee in insolvency of a corporation, for the purchase price of stock issued by the corporation to the defendant, it was held that the amount due belonged equally to all the creditors, and the defendant could not obtain a preference over the other creditors by offsetting an indebtedness due to him from the corporation. *Richardson v. Merritt*, 77 N. W. Rep. 968.

Where a stockholder, who was a creditor of the corporation, assigned for the benefit of creditors, and afterwards the corporation became insolvent, held, that the corporate debt should be set off against the stockholder's liability. *Markell v. Ray*, 77 N. W. Rep. 788.

A claim against an insolvent corporation by a stockholder is not a proper counterclaim in an action by a judgment creditor to enforce a stockholder's liability. *Helen v. Smith Fee Co.*, 79 N. W. Rep. 313.]

**Same; lien on private property.**

§ 2601. The private property of no stockholder shall be levied on under the preceding section, unless such stockholder, as well as the corporation, is duly served with process in the action, and the issue involving his individual liability as aforesaid raised and determined; and in no case whatever shall such property be levied on while sufficient corporate property can be found to satisfy the execution or any part thereof. (G. S. 1866, ch. 34, § 10; Kelley's Stats., § 2456.)

See § 2600, and cross-references.

[A sheriff levying upon an unpaid stock subscription, as a debt of the corporation, does not acquire the rights of a creditor of the company against a stockholder, but only those which the company might have against him, and in suing for the debt he must proceed as for a debt due

from the stockholder to the company. *Robertson v. Sibley*, 10 Minn. 323.

The above provisions, and those of Const., art. X, § 3, will not operate to prevent a creditor, who has recovered judgment against the corporation alone, establishing its liability on a contract, from maintaining an action against a stockholder to enforce his individual liability, in case execution is returned unsatisfied against the corporation. *Dodge v. Roofing Co.*, 16 Minn. 368.

Where a creditor has obtained judgment against a corporation, and execution thereon has been issued and returned unsatisfied, the creditor may bring an action against a stockholder to enforce his individual liability for the corporate debt, without joining the corporation as a party; and, in case of the death of the stockholder, he may present and prove his claim against the estate in the probate court. *Nolan v. Hazen*, 44 Minn. 478; s. c., 47 N. W. Rep. 155.]

**Same.**

§ 2602. The officer holding an execution which may be levied on private property, as aforesaid, shall make demand of payment thereon of the president, secretary, or some officer of the corporation, acting, or who was one of the last acting officers thereof; and if he does not forthwith pay said execution, or point out corporate property that may be levied on, the officer shall endorse the fact of such demand, refusal or neglect upon said execution, and thereupon may levy the same upon the private property of the stockholder served and impleaded as aforesaid. Such levy may be made to satisfy any balance due upon the execution after levy upon corporate property, or part-payment out of corporate funds. (G. S. 1866, ch. 34, § 11; Kelley's Stats., § 2457.)

**Increased capital stock; change of articles.**

§ 2738. Whenever any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter, shall, in the opinion of its board of directors, require an increased amount of capital stock, or whenever any incorporation created and incorporated under the provisions of this title, or adopting its provisions as hereinbefore provided, shall in the opinion of its board of directors, require any other modification of its articles of association not inconsistent with the provisions of this title, such corporation may, if authorized by the holders of a majority of the stock then existing, increase its capital stock to the amount so deemed to be required, or make such other modification of its articles of association; Provided, That if the corporation be one incorporated under the foregoing provisions of this title or adopting its provisions as aforesaid, it shall file in the office of the secretary of State new articles setting forth the modifications of its said articles of association proposed, and the amount of such desired increase of stock, if any, and such new articles shall be duly recorded, and a reference made to the same on the margin of the record of the original certificate or

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## Corporations for pecuniary profit.

articles, and thereafter such corporation shall be entitled to have such increased capital as is fixed by said new articles or such other modifications of the original articles of association as shall be therein specified; And provided, further, That if such corporation be one incorporated under, or entitled to the benefit of special charter provisions, a certificate of such increase, embracing a copy of the resolutions of the board of directors and of the stockholders relating to such increase, and showing the date thereof and the total capital stock of the company as thus increased, under the seal of the corporation and attested by the president and secretary thereof, shall be filed in the office of the secretary of State and there recorded within . . . days after the date of the assent of the stockholders to such increase, and thereafter such corporation shall be entitled to have such increased capital stock as is provided for in and by said resolution. (G. S. 1866, ch. 34, § 42, as amended, 1883, ch. 5, § 1; Kelley's Stats., § 2459.)

Amendment of articles. § 2803; see §§ 2820, 3392. See also §§ 3398, 3399.

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See § 6764.

**For what purposes organized; powers.**

§ 2794. Any number of persons, not less than three, who have or shall, by articles of agreement in writing, associate according to the provisions of this title, under any name assumed by them, for the purpose of engaging in or carrying on the business of mining, smelting or manufacturing iron, copper or other minerals; or for producing the precious metals; or for quarrying and marketing any kind of ore, stone, slate, or other mineral substance; or for constructing, leasing or operating docks, warehouses, public halls, elevators or hotels; or saving-fund, loan or building association, (or association for buying, owning, improving, selling and dealing in lands, tenements and hereditaments;) or for manufacturing gas, or any kind of manufacturing, lumbering, agricultural, mechanical, mercantile, chemical, transportation, or other lawful business, and who have or shall comply with the provisions of this title, shall, with their associates, successors and assignes, constitute a body corporate and politic, under the name assumed by them in the articles of agreement.

Provided, No company shall take a name previously assumed by any other company.

Any such association or corporation for buying, owning, improving, selling and dealing in lands, tenements and hereditaments, real, mixed and personal estate and prop-

erty, shall have, and may exercise and enjoy, all the franchises, rights, powers and privileges of a corporation, as provided in this title and act, and the same is made capable and authorized in law and in equity to have, own, purchase, receive, possess and retain to itself and successors, lands, tenements and hereditaments, real, personal and mixed estate and property, and to use and enjoy the same, and the same improve by erecting and constructing thereon dwelling-houses, and other buildings, erections and structures, and otherwise to enhance, build upon and improve the same, to every extent, and in such manner, and for such purpose as may become necessary, or as such association or corporation may deem proper or advantageous; and to sell, convey, lease, let, mortgage, or otherwise dispose of, charge or encumber such lands, tenements and hereditaments, real, mixed and personal property, and estate, or any of the same, or any right or interest therein, at pleasure, and in such manner and on such terms as such corporation or association may determine by order of its directors, or establish by its by-laws; and for that purpose to make and deliver, and in like manner accept and receive, all necessary and proper deeds, conveyances, mortgages, leases, and other contracts and writings obligatory, and to have and exercise all necessary rights, franchises, muniments, estate, powers and privileges necessary to that end; and such association or corporation is authorized to loan money and funds, and secure such loan by mortgage, or other security.

And any premium taken by such association for the preference or priority of such loans, or for the preference or priority on any sale or disposition of its lands, tenements or hereditaments, real, personal or mixed property or estate, or any premium for preference or priority taken by any mutual building association for any loan of its funds by such building association, shall not be deemed interest within the meaning of any law of this State, nor shall any excess of such premiums over any rate of interest permitted by the laws of this State be deemed or held, in any court of law or equity, to be usury.

Any association organized under this title is authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, and to hold, any real estate upon which such associates or association may have or hold any mortgage or judgment, or lien, or other incumbrance, or in which such associates or association may have an interest; and the real estate so purchased, to sell, convey, lease or mortgage, at pleasure, to any person or persons, or purchasers whatever.

Provided, however, That no mutual building association, nor association for buying, selling and dealing in lands, tenements and hereditaments, shall loan its funds except to its own members.

Publication of articles; capital stock; real estate, etc.—Gen. Stats., §§ 2795-2798.

The executors or trustees under any will or one (1) or more of such executors or trustees, who are authorized, requested or directed by the provisions of any will to organize a corporation for any of the purposes mentioned in this section or the general laws of this State, may, individually or as executors or together with the legatees mentioned in the will or one or more of such executors, trustees or legatees, may sign, execute and acknowledge articles of incorporation under the provisions of this act of which this is amendatory for the purpose of carrying out the intention of the testator and for forming and organizing such corporation, and in such case may transfer and convey to such corporation any property of the testator mentioned and referred to in such will; and said executors, trustees or legatees, or such of them as shall execute the articles of incorporation, may subscribe to the stock of such corporation to the amount of the value of the property mentioned and referred to in such will, and such executors or trustees may convey the same to such corporation in payment of the stock so issued and subscribed without application to or authority from any court. (G. S. 1866, ch. 34, § 45, as amended by L. 1878, ch. 10, and L. 1887, ch. 71; Kelley's Stats., § 2638.)

Const., art. IV, § 33; Id. art. X, § 2.

[Above section authorizes, under the expression "or other lawful business," the formation of corporations for carrying on any kind of lawful business, for pecuniary profit, not elsewhere specifically provided for, although not of the same kind as any of those previously enumerated in the section. *Brown v. Corbin*, 40 Minn. 508; s. c., 42 N. W. Rep. 481.]

Acceptance of a legislative charter may be presumed from acts of the corporators. *Sons of Temperance v. Brown*, 11 Minn. 356; *State v. Sibley*, 25 Id. 337.

Acts of a corporation, to amount to an adoption or acceptance of legislation affecting its charter, must clearly appear to have been done in pursuance and recognition thereof. *Boom Co. v. Prince*, 34 Minn. 79; s. c., 24 N. W. Rep. 344.

#### Promoters.

The presumption is that a promoter of a corporation is connected therewith for the legitimate purpose of organization, not for the illegitimate purpose of conspiracy to defraud. *Benton v. Minneapolis Tailoring, etc., Co.*, 76 N. W. Rep. 265.]

#### Legalizing publication of articles.

§ 2795. That the publication of articles of incorporation heretofore made for six (6) successive days in a daily newspaper printed and published in the county where such corporation is organized, be and the same is hereby legalized and made as valid and as effectual to all intents and purposes in the organization of corporations for any of the purposes designated in section one hundred and nine (109) of chapter thirty-four (34) of the general statutes, eighteen hundred and seventy-eight (1878), or in any act amendatory thereto, as if such publica-

tion had been made for four successive weeks in a newspaper so printed and published. (1889, ch. 231, § 1; Kelley's Stats., § 2641.)

See §§ 2804, 2807.

#### Application of preceding sections.

§ 2796. The provisions of sections two, three, four, seven, eight, nine, ten, eleven, forty-two and forty-four, of title one,\* shall apply to and be observed by corporations organizing under this title. (G. S. 1866, ch. 34, § 46, as amended by L. 1870, ch. 27; Kelley's Stats., § 2639.)

#### Capital stock; value of shares.

§ 2797. The amount of capital stock in any such corporation shall in no case be less than ten thousand (10,000) dollars, and shall be divided into shares of not less than two (2) dollars, nor more than one hundred (100) dollars each; except that the capital stock of mutual building and loan associations may be divided into shares of two hundred (200) dollars each, and the capital stock and number of shares may be increased at any regular or special meeting of the stockholders. (G. S. 1866, ch. 34, § 47, as amended by 1873, ch. 14, § 1; amended 1889, ch. 220; Kelley's Stats., § 2642.)

See §§ 2806, 2830. Increase of capital stock.  
§ 2820. Issuance of capital stock. § 3415.

[To constitute one a stockholder, it is not necessary that a certificate of stock be issued. *Holland v. Duluth Iron, M. & D. Co.*, 68 N. W. Rep. 50.]

When an increase of stock was purchased by the president, and paid for with city funds of which he was custodian, and the stock then sold to third parties, held, that the stock was not ultra vires, but only voidable. *Olson v. State Bank*, 69 N. W. Rep. 904.

An agreement with subscribers that for each share paid for a certificate of two or more shares shall be given, is void. *Rogers v. Gross*, 69 N. W. Rep. 894.

When bonds issued in excess of limit of indebtedness are not illegal. *Peatman v. Heat & Power Co.*, 69 N. W. Rep. 541.]

#### Real estate, power to hold, etc.

§ 2798. Every such corporation has power to acquire, hold and transfer all such real and personal estate as is necessary or convenient for the purpose of conducting, carrying on, or disposing of the business of such corporation. (G. S. 1866, ch. 34, § 48; Kelley's Stats., § 2645.)

See §§ 2817, 2835, 3414. Deeds, mortgages and other conveyances. §§ 4161, 4162.

[The Minnesota laws are applicable to private corporations for profit. *Tripp v. Bank*, 41 Minn. 400; s. c., 43 N. W. Rep. 60; *Bank v. Seeley*, 41 Minn. 404; s. c., 43 N. W. Rep. 1152. And the board of directors may authorize an assignment by the corporation when the conditions specified in the act exist. Id.]

\* Sections referred to above are §§ 2593, 2594, 2599, 2600, 2601, 2602, 2595, 2738, 2598, 2793, ante.

Stock; dividends; officers; existence; amendment — Gen. Stats., §§ 2799–2804.

#### **Transfer of stock; lien of company.**

§ 2799. The stock of any such corporation shall be deemed personal property, and be transferable only on the books of such corporation, in such form as the directors prescribe; and such corporation shall at all times have a lien upon the stock or property of its members invested therein, for all the debts due from them to such corporation, which may be enforced by advertisement and sale in the manner provided for selling delinquent stock. (G. S. 1866, ch. 34, § 49; Kelley's Stats., § 2643.)

Transfer of shares not valid except between the parties thereto, when. § 2599. Transfer, lien on. §§ 2819, 2832.

[A sale of stock, without transfer on books, is effectual as between the parties and attaching creditors. Lund v. Minn Co., 50 Minn. 36; s. c., 52 N. W. Rep. 268.

A transfer of stock held sufficient to change the equitable ownership, so as to make the transferee liable for the payment of calls on the stock. Basting v. Trust Co., 63 N. W. Rep. 721.

An assignment of shares, though without a transfer on the books, invests the assignee with an equitable title, which would be protected as against all persons not showing a superior right. Nicollet Nat. Bank v. City Bank, 38 Minn. 85; s. c., 33 N. W. Rep. 577.

An assignment of stock transferable only on the books without such transfer, for the purpose of collateral security, is effectual as against the bank asserting a lien for a debt of the stockholders, and its refusal, because of such asserted lien, to make the proper transfer on its books, renders it liable to the assignee as for conversion of the stock. Id.

An attachment of the shares by the bank, after notice of the assignment, is ineffectual to defeat the prior right of the assignee. Id.]

#### **Record of stock, etc.; reports of directors; dividends.**

§ 2800. The directors shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall at all times be open to the inspection of any and all stockholders; they shall also, when required, present to the stockholders reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation, not reducing the capital stock while they have outstanding liabilities. (G. S. 1866, ch. 34, § 50; Kelley's Stats., § 2644.)

Transfers not valid except to the parties thereto until regularly entered. § 2599. Books must be open to inspection. § 2818. Fraud in keeping books. § 6764; see § 2598. Directors must not declare a dividend when corporation is insolvent. § 2823.

#### **Offices of corporation.**

§ 2801. The directors of any corporation organized under this title have power to establish one or more offices without this State, and transact business thereat: Provided, That an office shall always be maintained in this State where legal process may

be served on the person in charge thereof. (G. S. 1866, ch. 34, § 51; Kelley's Stats., § 2646.)

See § 2833.

#### **Term of existence.**

§ 2802. No corporation shall be formed under this title to continue more than thirty years.

#### **Extension of term of certain corporations.**

§ 2802a. Any corporation heretofore organized under the laws of this State for a term of five years for the sole purpose of buying and selling real estate and negotiating real estate mortgages, whose original term has expired less than three years prior to the passage of this act, may at any time during the three years allowed by law for winding up its affairs, renew its corporate existence for a period not exceeding five years, by adopting a resolution expressing such proposed extension by a two-thirds vote of its stockholders, and by filing and publishing the same in the same manner provided for filing and publishing its original articles. Provided, that such proceedings to obtain such extension shall be taken within ninety (90) days after the passage of this act; and provided further, that this act shall not apply to any corporation which is insolvent, or the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction in this State. (L. 1899, ch. 252. An act authorizing the extension of the term of corporations in certain cases; affirnued April 17, 1899.)

#### **Amendment of articles of association.**

§ 2803. The shareholders or stockholders in any body politic or corporate which has been or hereafter may be incorporated pursuant to the provisions of title two of chapter thirty-four of the general statutes of this State, may amend the articles of association of such body corporate in any respect which might have been lawfully made a part of such original articles, by adopting, by a majority vote in number and amount of such shareholders and shares, articles specifying such amendments. (1875, ch. 19, § 1; G. S. 1878, ch. 34, § 118; Kelley's Stats., § 2647.)

See §§ 2598, 2807, 2829.

#### **Certificate of amendment; filing and publication.**

§ 2804. Any body politic or corporate amending its original articles of association, shall cause to be prepared a certificate stating the time when and the respect in which such articles were amended, which certificate shall be subscribed and sworn to by the president or other chief executive officer, and also by the secretary of such body politic or corporate, and shall also be filed,

## Manufacturing corporations; stock; articles, etc.—Gen. Stats., §§ 2805–2808.

published and recorded in the same manner provided by law for the filing, recording and publication of such original articles; and thereupon such amendments shall be and become a part of the articles of such body corporate, with the same force and effect as if such amendments had been adopted as a part of such original articles. (1875, ch. 19, § 2; G. S. 1878, ch. 34, § 119; Kelley's Stats., § 2648.)

See §§ 2807, 2795.

**Corporations for manufacturing or mechanical business.**

§ 2805. Any number of persons, not less than three, who, by articles of agreement in writing, have associated or shall associate according to the provisions of this act, under any name assumed by them, for the purpose of carrying on any kind of manufacturing or mechanical business not incompatible with an honest purpose, and who shall comply with all the provisions of this act, shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them in their articles of association. (1873, ch. 11, § 1; G. S. 1878, ch. 34, § 120; Kelley's Stats., § 2650.)

**Liability of stockholders of manufacturing corporations.** Const., art. 10, § 3, and note.

No corporation can be organized under this chapter except for an exclusively manufacturing or mechanical business. State v. Mfg. Co., 40 Minn. 213; s. c., 41 N. W. Rep. 1020.

A brewing company held to be exclusively a manufacturing corporation. Malting Co. v. Brewing Co., 67 N. W. Rep. 652.]

**Capital stock; shares.**

§ 2806. The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association, and shall be divided into shares of not less than ten (10) and not more than one hundred (\$100) dollars each, but every such corporation may increase its capital stock and the number of shares therein at any meeting of the stockholders specially named for that purpose. (1873, ch. 11, § 2; G. S. 1878, ch. 34, § 121, as amended by L. 1883, ch. 105; and 1897, ch. 249; Kelley's Stats., § 2634.)

See §§ 2797, 2830, 3391. Increase of capital stock not effectual until. § 3392.

**Articles of association.**

§ 2807. The purpose for which every such corporation shall be established, shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds to any other purpose:

Provided, That such articles of association may be amended in any respect which might have been lawfully made a part of such

original articles, at any meetings of such stockholders, by a majority vote of all the shares of stock represented in such corporation, upon giving notice of a meeting of such stockholders to be held for the purpose of making such change, in the same manner as provided in section four of this act for the first meeting of the corporation, except that notice of change shall not be waived as therein provided.

Proof of the publication of such notice and change, made by filing the affidavit of the publisher and a certified copy of the proceedings making such change, shall be filed in the office of the secretary of State, in the same manner as provided for the filing of the articles of incorporation of such association therein:

Provided, That whenever, after the adoption, filing and publication of the articles of association, and the making and recording of the certificate provided for by this act, and the creation thereby of a body corporate, the said corporation shall resolve to alter, modify or change any of its articles of association, such corporation may, by resolution duly passed at any regular meeting of the stockholders thereof, adopt a new article or articles, altering, modifying or changing any of the original articles.

Provided, further, That no such new or amended articles shall change the general nature of its business, or be operative or valid to alter, modify or change such original articles until the same shall be published and the certificate of the purposes for which said corporation is formed as set forth in such new or amended articles, in the same manner and with like formalities that the original articles are now required to be published and the certificate thereof recorded, and when so adopted, published, and the certificate aforesaid recorded, the said amended articles shall be substituted for and take the place of the original articles so amended. (G. S. 1878, ch. 34, § 122; 1879, ch. 8, § 1; Kelley's Stats., § 2351.)

**Publication of amendments.** §§ 2804, 2795; see § 2803, and cross-references.

**Meetings of stockholders; notice.**

§ 2808. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof in a newspaper published in the county in which such corporation is to be established, or if no newspaper is published in such county, in a newspaper published in an adjoining county, at least fifteen days before the time appointed for such meeting. Subsequent meetings of any such corporation may be called in such manner as its by-laws shall prescribe; Provided, That if the by-laws of any such corporation do not prescribe the manner of calling meetings thereof, its directors may call such meetings

Manufacturing corporations; directors and officers — Gen. Stats., §§ 2809–2813.

by giving the notice provided in this section for the first meeting of such corporation; but said notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation, and the first meeting of any such corporation which has been held pursuant to such written waiver or notice shall be valid. (1873, ch. 11, § 4; G. S. 1878, ch. 34, § 123; Kelley's Stats., § 2665.)

First meeting. § 3419. Stockholders may call meeting. § 2830. Quorum. § 2814.

[If the charter or by-laws fix the time and place for holding regular meetings, no further notice to stockholders is necessary. *Morrill v. Mfg. Co.*, 53 Minn. 371; s. c., 55 N. W. Rep. 547.

The stockholders who attend, whether one or more, constitute a quorum and can transact the business, elect officers, etc. Id.]

#### Board of directors; annual election.

§ 2809. The stock, property, affairs and business of every such corporation shall be under the care of and shall be managed by not less than three directors, who shall be chosen annually by the stockholders at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead. (1873, ch. 11, § 5; G. S. 1878, ch. 34, § 124; Kelley's Stats., § 2659.)

See §§ 3407, 2816, subd. 3. Powers and duties of directors. § 2831.

[An amendment by the legislature of the charter of a corporation, increasing the number of directors from five to nine, is not a fundamental alteration, and may, therefore, be effectually accepted by a majority of the stockholders. *Mower v. Staples*, 32 Minn. 284; s. c., 20 N. W. Rep. 225.

The power of a corporation to ratify an act of its agent, in the absence of evidence to the contrary, is presumed to be in the board of directors. *Land Assn. v. Ready*, 24 Minn. 350.

Directors have no authority to appropriate funds to the payment of claims which the corporation is under no obligation to pay. *Jones v. Morrison*, 31 Minn. 140; s. c., 16 N. W. Rep. 854. A vote of board of directors, fixing the compensation of some of the directors as officers of the corporation, and which is carried by the vote of such directors, is *prima facie* voidable at the election of the corporation or of a stockholder. Id.

The fact of being a director does not preclude one from performing other services for a corporation, outside his duties as director, and receiving compensation therefor. *Rogers v. Ry. Co.*, 22 Minn. 25.

Directors are personally liable if they suffer corporate funds or property to be wasted or lost by gross negligence and inattention to their duties; and an action at law may be maintained against them jointly and severally for the amount of such losses. *Mining Co. v. Ryan*, 42 Minn. 196; s. c., 44 N. W. Rep. 56.

In an action against directors for misfeasance or culpable negligence in discharging their duties, the corporation, and not the stockholders, is the proper party plaintiff. Id. In such an action, what is a sufficient cause of action. Id. Not necessary that complaint should negative knowledge of, or acquiescence on the part of the stockholders in, the negligence or misconduct of the directors. Id. There is no misjoinder of causes of action in a complaint which sets forth a series of acts or omissions on part of directors, alleged to

have constituted actionable negligence on their part. Id.

A contract between the corporation and a director is not necessarily voidable. *Battelle v. North Western, etc., Pavement Co.*, 37 Minn. 89; s. c., 33 N. W. Rep. 327.

Evidence held to show that the board of directors of a corporation made a certain determination by a two-thirds vote. *Fletcher v. Chicago, etc., Ry. Co.*, 69 N. W. Rep. 1085.

Minority of stockholders cannot dictate policy of the corporation. *Peatman v. Heat & Power Co.*, 69 N. W. Rep. 541.]

#### Failure to elect directors.

§ 2810. If any election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time within one year, to be fixed upon and notice thereof to be given by the directors. (1873, ch. 11, § 6; G. S. 1878, ch. 34, § 125; Kelley's Stats., § 2660.)

#### Officers, how chosen.

§ 2811. The directors of every such corporation shall choose one of their number to be president, and shall also choose a secretary and treasurer, which two last-mentioned officers shall reside and have their place of business, and keep the books of said corporation, within this State; and shall choose such officers as the by-laws of the corporation shall prescribe, all which said officers shall hold their offices until others shall be chosen in their stead. (1873, ch. 11, § 7; G. S. 1878, ch. 34, § 126; Kelley's Stats., § 2662.)

See § 3407. "Director" defined. § 6766. Subordinate officers. § 2816, subd. 3.

[A private corporation organized under the laws of this State must keep its place of business and corporate books in this State. For violation of this requirement its charter will be annulled. *State v. Lumber Co.*, 58 Minn. 330; s. c., 59 N. W. Rep. 1048.]

#### Vacancies.

§ 2812. The directors of such corporation for the time being shall have power to fill any vacancy which may happen in their board, by death, resignation or otherwise for the current year. (1873, ch. 11, § 8; G. S. 1878, ch. 34, § 127; Kelley's Stats., § 2661.)

#### Publication of articles; certificate to be filed, etc.

§ 2813. Before any corporation formed and established by virtue of the provisions of this act shall commence business, the president and directors thereof shall cause their articles of association to be published at full length in two newspapers published in the county in which such corporation is located, or at the capital of the State; and shall also make a certificate of the purpose for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, which certificate shall

Quorum of directors and stockholders; subscriptions — Gen. Stats., §§ 2814, 2815.

be signed by the president and a majority of the directors, and deposited with the secretary of this State, and a duplicate thereof with the register of deeds of the county in which said corporation is to transact its business; and said secretary and said register of deeds shall respectively record the same in books to be kept by them for that purpose; and within thirty days after the payment of any installment called for by the directors of such corporation, a certificate thereof shall be made, signed, deposited and recorded, as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this State, under the seal thereof, shall be received in all the courts in this State as *prima facie* evidence of the due formation, existence and capacity of such corporation, in any suit brought by or against the same. (1873, ch. 11, § 9; G. S. 1878, ch. 34, § 128; Kelley's Stats., § 2652.)

See §§ 2795, 2804. Certificate to be made under oath. § 2821.

[Failure to file the verified certificate does not affect the lawful character of the corporation. *In re Shakopee, etc., Co.*, 37 Minn. 91; s. c., 33 N. W. Rep. 219.]

#### Quorum of directors and stockholders; right to vote.

§ 2814. A majority of the directors of every such corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business. And a majority of the stockholders present or represented by proxy, at any legal meeting, when a majority of the stock of such corporation is so represented at the meeting, shall be capable of transacting the business of that meeting; and at all meetings of such stockholders, each share shall entitle the holder thereof, or his representative, to one vote. (1873, ch. 11, § 10; G. S. 1878, ch. 34, § 129; Kelley's Stats., § 2666.)

See § 2808, and cross-references.

[The board of directors requires the attendance of a quorum. *Morrill v. Mfg. Co.*, 53 Minn. 371; s. c., 55 N. W. Rep. 547.]

If all directors attend a meeting and participate in the business, notice of the meeting becomes immaterial. *Times Co. v. Nimocks*, 53 Minn. 381; s. c., 55 N. W. Rep. 546.

Stockholders are not disqualified to vote at stockholders' meetings, because they may have a personal interest in the matter. *Bjorngaard v. Bank*, 49 Minn. 483; s. c., 52 N. W. Rep. 48.

The minutes of a meeting of a corporation, or its board of directors, are *prima facie* evidence of their contents. *Heintzelman v. Relief Assn.*, 33 Minn. 138; s. c., 36 N. W. Rep. 100.

Right to vote stock by proxy discussed. *Martin v. Chute*, 34 Minn. 135; s. c., 24 N. W. Rep. 333. Resolution adopted or declarations made at a corporate meeting are not evidence of the truth of matters so declared as against persons not members of the corporation. *Redding v. Godwin*, 41 Minn. 355; s. c., 46 N. W. Rep. 563.

Where stock is transferable only on the books, the person in whose name the stock stands is entitled to vote it. The corporate books are conclusive upon the question as to who is entitled to vote the stock. *Morrill v. Mfg. Co.*, *supra*.]

#### Subscriptions; payment, how enforced.

§ 2815. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment, for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or may sell said stock at public auction, giving at least thirty days' notice thereof, and of the time and place of sale, by advertising in some newspaper published in the county where the business of such corporation is transacted, or at the capital of the State. And in case of a sale, the proceeds thereof shall be first applied in payment of the installments called for, and the expenses of the sale, and the residue shall be refunded to the owner thereof. In case the proceeds of such sale shall be insufficient to pay said installments, such corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so purchased. (1873, ch. 11, § 11; G. S. 1878, ch. 34, § 130; Kelley's Stats., § 2655.)

See §§ 3413, 2600.

[In an action to recover calls upon subscriptions for stock, an allegation that such calls were duly made by the directors and notice thereof duly given the subscribers is sufficient. *Harvester Co. v. Robbins*, 56 Minn. 48; s. c., 57 N. W. Rep. 317.

The transferee of stock is liable for unpaid subscriptions on it. *In re Ins. Co.*, 56 Minn. 180; s. c., 57 N. W. Rep. 468.

An action to recover the unpaid balance of a subscription to stock cannot be maintained without first tendering the stock. *Harvester Co. v. Jefferson*, 57 Minn. 456; s. c., 59 N. W. Rep. 532.

Complaint in an action to enforce stock subscriptions examined and held sufficient. *Duluth Co. v. Witt*, 65 N. W. Rep. 956.

Subscribers who had paid for their stock in order to induce subscribers who had repudiated their subscriptions to take the stock subscribed for, agreed with one of them that if he took the stock subscribed for by him, they would give him a note for the amount thereof. Held, that the agreement was not fraud on the other repudiating subscribers. *Traphagen v. Sager*, 65 N. W. Rep. 633. In an action to recover from a stockholder of an insolvent corporation his subscription, it is no defense that the purpose of the corporation was to foster gambling. *Augir v. Ryan*, 65 N. W. Rep. 640.

Calls may be made by the court upon the unpaid subscriptions of an insolvent corporation, where it has made an assignment under the insolvent laws. *In re Driving Park Assn.*, 53 Minn. 423; s. c., 55 N. W. Rep. 598; *Marson v. Deither*, 49 Minn. 423; s. c., 52 N. W. Rep. 38. Unnecessary to tender a certificate of the stock to maintain an action for such calls. *Id.*

A corporation may issue paid-up shares for property purchased at a fair valuation. *Malting Co. v. Brewing Co.*, 67 N. W. Rep. 652.

A subscriber to corporate stock held released by delay on the part of the corporation to comply with the conditions of the subscription. *Carter R. & H. Co. v. Hazzard*, 68 N. W. Rep. 74.

## Manufacturing corporations; general powers — Gen. Stats., § 2816.

A corporation has not the power as incident to it, to assess for its own use a sum of money on the corporators, and compel them by an action at law, to pay it. Such power must be derived from the statute or some other express promise to pay it. *Duluth Club v. MacDonald*, 76 N. W. Rep. 1128.]

## General powers and duties.

§ 2816. All corporations organized and established under the provisions of this act, shall be capable

To sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute to final judgment in any court or elsewhere;

Office where legal process may be served must be established within State. § 2801. Jurisdiction of court over receiver. §§ 3430 et seq. Levy on property. § 2601. Removal of suits to U. S. courts. §§ 3421 et seq. Crimes against property. §§ 6699 et seq. Pleadings. §§ 5253 et seq. Jurisdiction and proceedings in action. §§ 5889 et seq. Summons, how served, appearance. §§ 5199 et seq. Limitation of actions. § 5155. Place of trial when corporation a party. § 5185. Criminal offenses by corporations. Appointment of agents to receive service of summons. § 34290. Corporations dissolved continue bodies corporate for three years. § 3431. Foreign corporation to sue and be sued as domestic. § 3426. Allegation of corporate existence. § 5253. Garnishment. § 5311.

[A corporation may be sued for a libel published by its agents. *Pratt v. Pioneer Press Co.*, 35 Minn. 251; s. c., 28 N. W. Rep. 708.

Where defendant holds itself out to be a corporation, and contracts with plaintiff as such, it is estopped to deny its corporate existence. *Scheufler v. Grand Lodge*, 45 Minn. 256; s. c., 47 N. W. Rep. 799.

Where defendant has assumed to make the contract on which the action is brought by the name by which it is sued, it is immaterial, so far as plaintiff's right to recover is concerned, whether it is a corporation or a mere voluntary association. *Perine v. Grand Lodge*, 50 N. W. Rep. 1022.

In an action by a corporation to enforce a contract, an allegation of the answer denying plaintiff's corporate charter is immaterial. *Land Co. v. Dayton*, 39 Minn. 315; s. c., 40 N. W. Rep. 66.

Defendant having contracted with plaintiff as a corporation, he is estopped to deny its corporate existence and character in an action upon such contract. *Economizer Co. v. Denslow*, 46 Minn. 171; s. c., 48 N. W. Rep. 771.

Subscriber to corporate stock, who was a promoter of the corporate organization, and who has been a party to the subsequent proceeding in incurring liabilities and issuing the stock, is estopped to deny that the association is a corporation de facto, or that the stock so issued is valid, although the corporate organization is legally defective. *Id.*

A corporation de facto, at least where there is a law under which a corporation may be formed for such purposes, may take and hold property, and conveyances to it will be valid, except in a direct proceeding by the State to inquire into its rights to exercise corporate franchises. In an action brought by it to recover such property, no private person will be allowed to attack collaterally the regulation of its organization. *Lutheran Church v. Froisille*, 37 Minn. 447; s. c., 35 N. W. Rep. 260.

A bona fide purchaser of accommodation paper of a corporation having power to deal in mercantile paper may recover thereon from the corporation. *In re Jacoby-Mickolas Co.*, 70 N. W. Rep. 1085; *Am. Trust & Savings Bank v. Gluck*, *id.*

To have a common seal, and to alter the same at pleasure;

To elect, in such manner as they shall determine, all necessary officers; to fix their compensations, and define their duties;

Directors, election of. § 2809. Failure to elect. § 3407. Election of principal officers. § 2811.

[The appointment of an attorney at a stipulated salary per year, by board of directors of a corporation, and an acceptance of such appointment, upon the terms offered, is a consummated contract of employment, and neither party, without consent of the other, can lawfully rescind the same for at least a year. *Horn v. Land Assn.*, 22 Minn. 233.

Person being appointed secretary of a corporation, but the compensation not being fixed, he may recover, upon a quantum meruit, the reasonable value of his services. *Rogers v. Ry. Co.*, 22 Minn. 25.

Quo warranto may be issued from the district court to an officer of a private corporation to determine his right to the corporate office he exercises. *State v. Otis*, 58 Minn. 275; s. c., 59 N. W. Rep. 1015.

Signature of secretary held not essential to validity of note. *Peatman v. Heat & Power Co.*, 69 N. W. Rep. 541.

A stockholder of a corporation, and acting as its president, may enter into a salary contract for his services with it; but he cannot use his position when making such contract to his own advantage, or to the disadvantage of the corporation; nor can he bind it to pay him a greater salary than his services are reasonably worth; and a contract of this kind between such president and the acting secretary and treasurer of the corporation will be scrutinized with great care. *Church v. Church Cementico Co.*, 77 N. W. Rep. 548.]

To ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and

May adopt by-laws. § 2831. Manner of calling and conducting meetings determined by by-laws. § 3412.

[Where the articles of a corporation provide for the management of its business by a board of directors, and for meetings of that board, but do not provide for meetings of the corporation, and the first by-laws were adopted by the directors, the latter have power to amend such by-laws. *Heintzelman v. Druids' Relief Assn.*, 38 Minn. 138; s. c., 36 N. W. Rep. 100.

A corporation organized for the purpose of "buying, selling, and dealing in" all kinds of fuel, etc., and to do any and all things that may legally be done to promote the interest of the corporation and its stockholders, the capital stock of which is held by various dealers in fuel, has no power under its articles of incorporation to make by-laws fixing a price for fuel, and prohibiting its stockholders in their individual business from having more than one office, or selling below the price fixed. *Kolff v. Fuel Exchange*, 50 N. W. Rep. 1036.]

To employ all such agents, mechanics and other laborers as they shall think proper. (1873, ch. 11, § 13; G. S. 1878, ch. 34, § 132; Kelley's Stats., § 2G67.)

Employers prohibited from requiring surrender of rights of citizenship. §§ 6962 et seq. Blacklisting and coercing of employees prohibited. § 6964b. Penalty for coercing employees. § 6964c.

Inspection of books; stock transfers; withdrawal of capital — Gen. Stats., §§ 2817-2824.

**Power to hold real and other property.**

§ 2817. Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements and hereditaments, and such property of every kind, as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of, or as security for, debts due to such corporation, and to manage and dispose of the same at pleasure. (1873, ch. 11, § 14; G. S. 1878, ch. 34, § 133; Kelley's Stats., § 2668.)

See §§ 2798, 2835, 3414. Deeds, mortgages and other conveyances. §§ 4161, 4162.

[A de facto corporation may take and hold property, and conveyances to it will be valid, except in a direct proceeding by the State to inquire into its right to exercise corporate franchises. Lutheran Church v. Froisile, 37 Minn. 447; s. c., 35 N. W. Rep. 260.

Certain stockholders being parties to a fraudulent contract by the corporation, a court of equity will not grant them affirmative relief therefrom. Weed v. Little Falls, etc., Co., 31 Minn. 154; s. c., 16 N. W. Rep. 851.

The mere fact that one is the attorney and a stockholder of a corporation does not charge him with constructive notice of a contract of the corporation and its breach. Tarbox v. Gorman, 31 Minn. 62; s. c., 16 N. W. Rep. 466.]

**Books open to inspection; annual statement.**

§ 2818. The books of every such corporation, containing their accounts, shall be kept, and shall at all reasonable times be open in the county where such corporation is located, or at the office of the treasurer within this State, for the inspection of any of the stockholders of said corporation; and said stockholders shall have access to the books and statements of said corporation, and shall have the right to examine the same in said county or at said office; and as often as once a year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders by order of the directors. (1873, ch. 11, § 15; G. S. 1878, ch. 34, § 134; Kelley's Stats., § 2669.)

See §§ 2599, 2598, 2800, and cross-references.

[An entry in books of a corporation, regularly made, is competent evidence in behalf of the corporation. Schell v. Bank, 14 Minn. 43.]

**Stock deemed personal property.**

§ 2819. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all the debts due from them to such corporation. (1873, ch. 11, § 16; G. S. 1878, ch. 34, § 135; Kelley's Stats., § 2657.)

See §§ 2599, 2800, 2799, and cross-references.

**Certificate of increase of capital.**

§ 2820. When any such corporation shall increase its capital stock as provided in the second section of this act (§ 2654), the president and directors shall, within thirty days thereafter, make a certificate thereof, which shall be signed, deposited and recorded, as provided in the ninth section (§ 2652). (1873, ch. 11, § 17; G. S. 1878, ch. 34, § 136; Kelley's Stats., § 2656.)

See § 2788.

**Certain certificates under oath.**

§ 2821. The certificate required by the ninth, twelfth and seventeenth sections of this act,\* shall be made under oath or affirmation, by the person subscribing the same; and if any person shall knowingly swear or affirm falsely as to any material facts, he shall be deemed guilty of perjury, and be punished accordingly. (1873, ch. 11, § 18; G. S. 1878, ch. 34, § 137; Kelley's Stats., § 2670.)

Certificate to contain what. § 2813.

**Withdrawal of capital.**

§ 2822. If the capital stock of any such corporation shall be (withdrawn) and refunded to the stockholders, before the payment of all the debts of the corporation for which such stock would have been liable, stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to whom any part of said stock has been refunded, to contribute their proportional part of the sum paid by him as aforesaid. (1873, ch. 11, § 20; G. S. 1878, ch. 34, § 139; Kelley's Stats., § 2658.)

See § 2600, cross-references, and note.

**Payment of dividends when insolvent.**

§ 2823. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be jointly and severally liable, in an action founded on this statute, for all debts due from such corporation at the time of such dividend. (L. 1873, ch. 11, § 21; G. S. 1878, ch. 34, § 140; Kelley's Stats., § 2664.)

Directors shall declare dividends from profits. § 2800.

**Neglect by corporate officers.**

§ 2824. If the president, directors or secretary of any such corporation shall inten-

## Mining corporations; organization — Gen. Stats., §§ 2825-2829.

tionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal. (1873, ch. 11, § 22; G. S. 1878, ch. 34, § 141; Kelley's Stats., § 2671.)

See § 2825, and cross-references.

## Violation of act; liability of directors.

§ 2825. If any corporation organized and established under the authority of this act shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid. (1873, ch. 11, § 21; G. S. 1878, ch. 34, § 140; Kelley's Stats., § 2663.)

See § 2600, and cross-references.

[Where a series of acts, or a continuous course of conduct, on the part of directors in violation of above statute, finally producing the insolvency of the corporation, is begun before the debt of a creditor is contracted, the debt is one contracted "after such violation," although the series of acts or course of conduct is not completed, or the insolvency of the corporation consummated, until afterward. Patterson v. Mfg. Co., 41 Minn. 84; s. c., 42 N. W. Rep. 926.]

The ultra vires acts of the directors in executing accommodation paper in the corporate name, or in lending its funds to others, constitute a violation of this section. Id. To constitute "assent" by a director, there must be some willful violation of duty; mere negligence in not knowing what he ought to have known is not sufficient. Id. A creditor of the corporation may sue one or more of the directors to enforce the liability without joining all the creditors to whom they are liable, or all the directors subject to the liability. Id. The fact that the affairs of the corporation are in the hands of a receiver does not affect this right of action. Id. Not necessary that the creditor shall have obtained judgment against the corporation before suing the directors; he may, if necessary, join it with the directors as codefendant, and establish his claim against the corporation in the same action. Id. An action by a creditor of an insolvent corporation to enforce the liability created by above section is governed by the statutes which prescribed three years limitation in respect to actions upon "a statute for a penalty or forfeiture, where the action is given to the party aggrieved." Bank v. Mfg. & Car Co., 51 N. W. Rep. 117.]

## Duration; renewal.

§ 2826. No corporation formed under the provisions of this act shall continue more than thirty years in the first instance, but it may be renewed from time to time for a period not longer than thirty years: Provided, That three-fourths of the votes cast at any regular meeting of the stockholders for the purpose are in favor of such renewal, and those desiring a renewal purchase the stock of those opposed thereto at its current

value. (1873, ch. 11, § 24; G. S. 1878, ch. 34, § 143; Kelley's Stats., § 2653.)

## Mining and manufacturing corporations; powers.

§ 2827. Any number of persons not less than three (3), desiring to form a corporation for the purpose of mining, smelting, reducing, refining or working ores or minerals, or for working coal mines or stone quarries and marketing the material, or for manufacturing brick or stone or iron, steel, copper or other metals, or for the purpose of buying, working, selling and dealing in mineral or other lands, or for the whole or any part of said purposes, may do so upon complying with the provisions of this act; and any corporation so formed shall be entitled to the rights and privileges and be subject to the duties and obligations herein prescribed, and shall have perpetual succession. (1876, ch. 28, § 1; G. S. 1878, ch. 34, § 144, as amended by 1881, ch. 27, § 1; Kelley's Stats., § 2672.)

## Articles of incorporation.

§ 2828. Such persons shall sign and severally acknowledge articles of incorporation, which shall declare that they do thereby associate together and agree upon said articles for the purpose of forming a corporation under the provisions of this act, and which said articles shall also contain —

First. The name of the corporation, which shall not be the same as that previously assumed by any other corporation in this State.

Second. The general nature of the business to be carried on, and the place of the principal office or headquarters of the company.

Third. The names and places of residence of the persons so associating to form such corporation.

Fourth. The amount of the capital stock of said corporation. (1876, ch. 28, § 2; G. S. 1878, ch. 34, § 145; Kelley's Stats., § 2674.)

## Execution of articles; powers of corporation; amendment of articles.

§ 2829. Such articles shall be executed in duplicate, one of which shall be deposited for record in the office of the register of deeds of the county where said company shall establish its principal office, and the other with the secretary of State; and upon being so deposited, said corporation shall be deemed to exist under this act, for the purposes specified in said articles, as a manufacturing and mechanical corporation, under the Constitution and laws of this State; and may sue and be sued in the corporate name, and in such corporate name may contract and be contracted with, and transact and carry on the business mentioned in said articles; and may purchase, acquire, hold, use, sell, transfer, convey, rent and lease all such real and personal property and

**Capital stock; by-laws; transfer of stock — Gen. Stats., §§ 2830-2834.**

effects as may be necessary or convenient for the purposes of said corporation.

A certified copy of said articles, from the said register of deeds or from the secretary of State, shall be evidence, in all courts, of such corporation.

Said articles of incorporation may be amended at any time in any respect within the purview of this act, by a majority vote in amount of the stockholders, and by depositing such amendment for record in the office where the articles of incorporation are deposited for record. (1876, ch. 28, § 3; G. S. 1878, ch. 34, § 146, as amended by 1881, ch. 14 [Ex. Ses.], § 1; Kelley's Stats., § 2675.)

See § 2803, and cross references.

**Capital stock; shares; right to vote.**

§ 2830. The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association and shall be divided into shares of not less than ten and not more than one hundred dollars each, but every such corporation may increase its capital stock and number of shares therein at any meeting of the stockholders specially named for that purpose. (1876, ch. 28, § 4; G. S. 1878, ch. 34, § 147, as amended by L. 1897, ch. 249; approved April 23, 1897.)

See § 2797, and cross-references; and see also § 2806, ante.

**By-laws; record of proceedings; first board of directors.**

§ 2831. Such corporation may prescribe and adopt by-laws for the management of its business and affairs by a board of directors, trustees, committee, or other officers or agents, and provide for their election or appointments, and prescribe their duties, and may require bond from any officer for the faithful discharge of duties, and may by such by-laws prescribe in respect to all matters appertaining to the business and affairs of said corporation, not inconsistent with the provisions of this act, nor the Constitution or laws of this State. Such by-laws may be made, altered or amended by the directors, trustees or committee clothed with the general management of the affairs of such corporation; but the stockholders, at any regular meeting, may repeal or alter any by-law, or adopt new ones, and such action shall remain binding until repealed or changed by the stockholders themselves at some regular meeting. Such corporation shall keep a record of all proceedings had at meetings of stockholders, and also of all proceedings had or taken by the board of directors, trustees or committee having charge of its affairs, and such record shall be subject to the inspection of all stockholders at all reasonable times. A copy of all by-laws, duly certified, and all amendments and alterations of the same, shall be filed for record with the register of deeds where said articles of

incorporation are recorded, and also with the secretary of State, and shall not become operative or valid until so filed. Until otherwise provided, the persons executing such articles of incorporation shall constitute a board of directors, with full power and authority to make by-laws, and manage the affairs and business of such corporation. (1876, ch. 28, § 6; G. S. 1878, ch. 34, § 149; Kelley's Stats., § 2678.)

Directors, election of. § 2809, and cross-references. Power to adopt by-laws. § 2816, subd. 4.

**Stock, transfer thereof; meetings of stockholders.**

§ 2832. The stock of any such corporation shall be deemed personal property, and may be issued, sold and transferred as may be prescribed by resolution or by-laws of said corporation or its managing board. Upon the issuance of stock, the lawful holders thereof shall constitute the members of such corporation, and a majority in amount thereof may call a meeting of the stockholders at any time, irrespective of any by-laws, at the principal office of the company, or at the capital of the State, upon giving thirty days' notice by publication in a newspaper published at the place of such office, if there be such paper, and if not, then a paper published at the capital. (1876, ch. 28, § 6; as amended by L. 1897, ch. 196; G. S. 1878, ch. 34, § 149; Kelley's Stats., § 2677.)

See §§ 2599, 2799, 2808, and cross-references. Personal property defined. § 1384.

[A conditional sale of stock by a corporation, with an option to the purchaser to revoke, held not ultra vires. *Vent v. Coffee & Spice Co.*, 67 N. W. Rep. 70.]

**Meetings and offices without the State.**

§ 2833. The directors or managing officers of any such corporation may meet and transact business without this State, as may also the stockholders, by by-laws therefor; and offices may be established without this State for the transaction of business: Provided, That an office shall always be maintained in this State, where legal process may be served on such corporation; and such service upon an officer or director, if personally made, shall be deemed personal service upon the corporation. (1876, ch. 28, § 7; G. S. 1878, ch. 34, § 150; Kelley's Stats., § 2681.)

See § 2801.

**Power to hold stock in other corporation.**

§ 2834. Any corporation organized under this act may take, acquire and hold stock in any other corporation, if a majority in amount of the stockholders shall so elect. (G. S. 1876, ch. 28, § 8; G. S. 1878, ch. 34, § 151, as amended 1881, ch. 27, § 4; Kelley's Stats., § 2680.)

Fees for filing articles; form of certificate, etc. — Gen. Stats., §§ 2835–2837, 3391–3394.

**Real estate; power to mortgage, etc.**

§ 2835. Any corporation organized under this act may mortgage, sell or lease its real estate, or any part thereof, if authorized or approved by a majority in amount of its stockholders, but not otherwise. (1876, ch. 28, § 9; G. S. 1878, ch. 34, § 152, as amended 1881, ch. 27, § 5; Kelley's Stats., § 2679.)

See §§ 2798, 2817, 3414. Deeds, mortgages and other conveyances. §§ 4161, 4162.

**Fraudulent issue of stock.**

§ 2836. Any officer of any corporation organized under this act, or any other person or persons, who shall fraudulently issue or cause to be so issued, any stock, scrip, or evidence of debt of such corporation, or who shall sell or offer for sale, hypothecate, or otherwise dispose of any such stock, scrip, or other evidence of debt, knowing the same to be so fraudulently issued shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the State prison not more than ten nor less than one year. (1876, ch. 28, § 10; G. S. 1878, ch. 34, § 153; Kelley's Stats., § 2682.)

Issuance of capital stock. § 3415; see § 6762. Officers selling forged scrip guilty of forgery. § 6699.

**Amendment of act.**

§ 2837. This act may be altered or amended at the pleasure of the legislature, but not so as to divest or impair any right of property acquired under the same. (1876, ch. 28, § 11; G. S. 1878, ch. 34, § 154; Kelley's Stats., § 2673.)

See Const., art. I, § 11.

[An amendment by the legislature of the charter of a corporation, increasing the number of directors from five to nine, is not a fundamental alteration, and may, therefore, be effectually accepted by a majority of the stockholders. Mower v. Staples, 32 Minn. 284; s. c., 20 N. W. Rep. 225.]

**1. Incorporation and Organization.**

**Fees for filing certificates or articles of incorporation.**

§ 3391. That no corporation or association, other than those formed for religious, educational, social or charitable purposes, and building and loan societies, and corporations for the manufacture of butter, cheese, or other dairy products, and workmen's co-operative associations, and township mutual fire insurance companies, shall hereafter be created or organized under the laws of this State, unless the persons named as corporators therein, shall, at or before the filing of the articles of association or incorporation, pay into the State treasury the sum of fifty (50) dollars for the first (1st) fifty thousand (50,000) dollars, or fraction thereof of the capital stock of such corporation or association, and the further sum of five (5) dollars for every additional ten thousand (10,000) or fraction thereof of its capital

stock. (L. 1889, ch. 229, § 1; Kelley's Stats., § 3149.)

See § 2797, and cross-references.

[Above section applied. State v. R. R. Co., 48 Minn. 17.]

**Fees on increase of capital stock.**

§ 3392. No increase of the capital stock of any corporation or association heretofore or hereafter formed, other than those excepted in section one (1) of this act, shall be valid or effectual until such corporation or association shall have paid into the State treasury the sum of five (5) dollars for every ten thousand (10,000) dollars, or fraction thereof, of such increase in the capital stock of such corporation or association. (1889, ch. 229, § 2; Kelley's Stats., § 3150.)

See § 2806, and cross-references.

**Receipt of State treasurer to be filed.**

§ 3393. It shall be the duty of every corporation or association hereafter organized, or which shall hereafter increase its capital stock, to file with the secretary of State, at the time of filing the articles of association or instrument evidencing such increase, a duplicate receipt of the State treasurer for the payments herein required to be made; which receipt, in duplicate, is hereby made the duty of such treasurer to furnish. Provided, None of the provisions of this act shall apply to any manufacturing corporation or association whose articles provide that its functions shall be limited to the business of manufacturing and to business essential thereto. Provided further, That none of the provisions shall apply to or in any manner affect corporations which may be organized for the purpose of raising and improving live stock, cultivating and improving farm, garden or horticultural lands, growing sugar beets, or any corporation formed or created for the purpose of canning fruit or vegetables, or the local telephone companies connecting towns or villages of less than two thousand (2,000) inhabitants each. (1889, ch. 229, § 3, as amended by 1891, ch. 127, § 1; Kelley's Stats., § 3151.)

See § 2806, and cross-references.

**Form of State certificate of incorporation.**

§ 3394. Whenever any corporation hereafter organized under the general law of this State shall have complied with all the provisions of the general statutes in regard to the filing for record of the articles of incorporation of such corporation and of the requisite affidavit of proof of publication, the secretary of State shall thereupon issue a certificate in the following form:

State of Minnesota:—

Be it known, that whereas (here the names of the subscribers to the articles of incorporation shall be inserted), have associated

Certificate, issued when; change of articles, etc.—Gen. Stats., §§ 3395–3400.

themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of incorporation shall be inserted), with a capital of (here the amount of capital fixed in the articles of incorporation shall be inserted), and have complied with the statutes of this State in such case made and provided, as appears from the articles of incorporation, and the affidavit of proof of publication filed in this office; now, therefore, I (here the name of the secretary shall be inserted), secretary of the State of Minnesota, do hereby certify that said (here the names of the subscribers to the articles of incorporation shall be inserted), their associates and successors, are legally organized and established as, and are hereby made an existing corporation under the name of (here the name of the incorporation shall be inserted), with the powers, rights and privileges and subject to the limitations, duties and restrictions which by law appertain thereto. Witness my official signature hereunto subscribed and the seal of the State of Minnesota hereunto fixed this ..... day of ..... in the year ..... (in these blanks the day, month and year of execution of this certificate shall be inserted).

The secretary shall sign the same and cause the seal of the State to be thereto affixed, and such certificate shall be prima facie evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with the like effect as the original certificate. (1889, ch. 226, § 1; Kelley's Stats., § 3147.)

#### **Certificates issued to corporations already incorporated.**

§ 3395. Whenever any corporation already incorporated under the provisions of said chapter thirty-four (34) shall have complied with the provisions of said chapter thirty-four in regard to the filing for record of the articles of incorporation and of the requisite affidavit of proof of publication, and shall make application for such certificate and shall pay one (1) dollar therefor, the secretary of State shall thereupon issue a certificate in the form prescribed in the preceding section. And such certificate shall have the same force and effect in all respects, and a certified copy thereof of the same force and effect, as if such certificate had been issued to a corporation incorporated subsequent to the passage of this act. And the secretary shall keep a record of all such certificates issued. (1889, ch. 226, § 2; Kelley's Stats., § 3148.)

#### **Approval of articles by attorney-general not necessary.**

§ 3396. Hereafter it shall not be necessary for the attorney-general to indorse any form

of approval upon the articles of incorporation of any incorporated company. (L. 1889, ch. 248, § 1.)

#### **Exceptions.**

§ 3397. This act shall not apply to religious corporations. (L. 1889, ch. 248, § 2.)

#### **Corporations under special act; directors; stock.**

§ 3398. That the shareholders in any body corporate heretofore chartered, incorporated or organized by or under any special act or acts of the legislature of the State or territory of Minnesota, may by resolution adopted at any regularly called meeting of such shareholders, by a majority vote in number and amount of such shareholders and the shares in said corporation and specifying the exact nature of the change intended, alter the number of the members of the board of directors of said body corporate (whether by increasing or diminishing the same) to any number so designated, not less than three or more than fifteen, or may, in like manner, increase or diminish the amount of the capital stock in said body corporate or the number of shares of stock therein, or may in like manner establish one hundred dollars as the par value of shares of stock in said body corporate and provide for the conversion of outstanding shares of said body corporate into shares thereof of the par value of one hundred dollars. (L. 1893, ch. 43, § 1.)

#### **Certificate of change, to be filed, etc.**

§ 3399. That any body corporate adopting any such resolution shall cause to be prepared a certificate setting forth such resolution in full and stating the time when the same was adopted, which certificate shall be subscribed and sworn to by the president or other chief executive officer and also by the secretary of such body corporate, and shall be filed, published and recorded in the same manner provided in and by title one of chapter thirty-four of the general statutes of one thousand eight hundred and seventy-eight for the filing, recording and publication of articles of incorporation of corporations organized under the provisions of that chapter and title; and thereupon the change so resolved upon shall become effectual and said resolution shall be of the same force and effect as if the provisions therein contained had been a part of the original act of incorporation of said body politic. (L. 1893, ch. 43, § 2.)

#### **Amendment of articles of incorporation; extension of term.**

§ 3400. Any corporation, heretofore or hereafter organized under any general law of this State, may amend its articles of incorporation in any respect which might have been made part of said original articles,

Extension, etc., legalized — Gen. Stats., §§ 3401, 3403, 3405.

and may renew the term of its corporate existence from time to time, not exceeding the term originally limited therefor, by adopting a resolution expressing such proposed amendment or renewal, by a two-thirds (2-3) vote of all its members, shareholders, or stockholders present and voting at any regular meeting of such corporation or at any special meeting called for that purpose, and clearly specifying the same and outlining the proposed amendment, and filing and publishing such resolution in the manner provided for filing and publishing its original articles.

Provided, This act shall not apply to corporations heretofore organized under title one (1) of chapter thirty-four (34) of general statutes of one thousand eight hundred and ninety-four (1894).\* (L. 1885, ch. 155, as amended by L. 1897, ch. 12.)

See § 2803, and cross-references.

#### **Extension legalized.**

§ 3401. That in any case where a corporation created by the laws of this State shall, within the period of its corporate existence as originally defined, have heretofore initiated proceedings authorized by law for the extension of its corporate existence, and said proceedings have been regularly taken and consummated, except that the original period of corporate existence had expired prior to the making of the newspaper publication of the resolution or amendatory articles in that behalf required by law, the said proceedings are hereby legalized, and declared as valid as though such publication had been made before the original corporate term had expired. (L. 1893, ch. 49, § 1.)

#### **Defective organization cured.**

§ 3403. That in case where there has been heretofore an attempted formation and organization or renewal of any corporation under any of the general laws of this State, and the persons so attempting to form or organize or renew any corporation, have actually adopted, signed and filed in the office of the secretary of State, articles of association, in which the business specified to be carried on by them as such corporation was such as might lawfully be carried on under said laws, and have, in fact, proceeded as such corporation under the corporate name assumed by them, to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance, to or from such body corporate, in such corporate name, any property, real or personal; such attempted formation and organization or renewal, in each and every such case, is hereby legalized and declared a valid and effectual formation and organization or renewal of a corporation under the name assumed from and after the

time of the actual filing, as aforesaid, of such articles, notwithstanding the omission of any other matter or thing by law prescribed to be done or observed in the formation, organization or renewal thereof; and any and all conveyances of property, real or personal, in good faith and lawful form, made to or by any such body in the corporate name so assumed, are hereby legalized and declared as valid and effectual for the purposes intended thereby, as if such body corporate had been originally, in all things, duly and legally incorporated: Provided, That no such corporation, nor any of the acts or doings thereof, shall be or are hereby validated, unless such so-called corporation has filed in the office of the secretary of State, and also in the office of the register of deeds of the county in which is the principal place of business of said corporation its articles of incorporation; And provided further, Nothing in this act shall be construed to discharge any liability of any person upon any contract of said corporation heretofore made in its articles of incorporation. (1885, ch. 156; Kelley's Stats., § 3146.)

A similar act was passed in 1881 (Ex. sess., ch. 62), and in 1887, ch. 132.

#### **Legalizing certain corporations.**

§ 3405. That in any case where there has been heretofore any attempted formation and organization or renewal of any corporation under any of the general laws of this State, and the persons so attempting to form or organize or renew any corporation have actually adopted and signed articles of association in which the business specified to be carried on by them as such corporation was such as might lawfully be carried on under said laws, and have, in fact, proceeded as such corporation under the corporate name assumed by them to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance to or from such body corporate in such corporate name any property, real or personal, such attempted formation and organization or renewal in each and every such case is hereby legalized and declared a valid and effectual formation and organization or renewal of such corporation under the name assumed, notwithstanding the omission of any other matter or thing by law prescribed to be done or observed in the formation, organization or renewal thereof. And any and all conveyances of property, real or personal, in good faith and lawful form, made to or by any such body under the corporate name so assumed, are hereby legalized and declared as valid and effectual for the purposes intended thereby as if such body corporate had been originally in all things duly and legally incorporated. Provided, That no such corporation nor any of the acts or doings thereof shall be or are hereby validated, unless such so-

\*Proviso relates to corporations empowered to take private property.

## Correction of errors; general powers; first meeting — Gen. Stats., §§ 3406-3408.

called corporation shall within ninety [90] days from the passage of this act file in the office of the secretary of State, and also in the register of deeds in the county in which is the principal place of business of said corporation, its articles of incorporation, if the same have not been heretofore so filed, and shall at the time of filing such articles in the office of the secretary of State, pay into the State treasury the fees provided for by chapter two hundred and twenty-five (225) of the general laws of one thousand eight hundred and eighty-nine (1889), if the date of such attempted organization is subsequent to the passage of said law. (L. 1891, ch. 45, § 1.)

## Correction of errors; publication of articles.

§ 3406. That every private corporation, heretofore in good faith organized or attempted to be organized under the general laws of this State, but whose articles of incorporation have been irregularly published or for an insufficient length of time, but where the persons organizing the same have acted in good faith, and corporate meetings have been held, and business transacted, and such *de facto* corporation has acted in all things as though there were no errors or omissions in its organization, the same is hereby declared to be in law a valid and legal corporation *de jure*, and shall be so deemed and held in all courts, and as to all transactions past and future, and the liabilities of the stockholders and incorporators shall be those of a corporation *de jure* and the same as though there was no defect in its organization. Provided, This act shall not affect any action at law now pending. (L. 1893, ch. 50, § 1.)

## General powers; meetings out of State; failure to elect officers; classification of directors.

§ 3407. All corporations, when no other provision is specially made, may have a common seal, which they may alter at pleasure; they may elect all necessary officers, fix their compensation, and define their duties and obligations; and make by-laws and regulations, consistent with the laws of the State, for their own government, and for the due and orderly conduct of their affairs, and the management of their property.

The members of any corporation now or hereafter organized under the provisions of this chapter, and the directors and managers thereof, may meet and transact business without the State the same as within the State; but no corporation or association created or existing or which shall exist, under this act, shall cease or expire from neglect on the part of the corporation to elect directors or officers at the time mentioned in their by-laws; and all officers elected by such corporation or association shall hold their offices until their successors are duly elected.

Any corporation in this State, whether created by special act or organized under any general or special law of the territory or State of Minnesota, or doing business within this State by virtue of or under any legislative enactment of said territory or State, may, by resolution of its board of directors, classify its directors into three classes, each of which shall be composed as nearly as may be of one-third (1-3) of the whole number of directors; the term of office of the first class to expire at the date of the next annual election thereafter; of the second class, at the date of the second annual election thereafter; of the third class, at the date of the third annual election thereafter. At each annual election thereafter a number of directors shall be elected for three (3) years equal to the number whose term of office shall then expire; all other vacancies shall be filled in accordance with the by-laws.

Provided, That if no election be had at the time of holding the annual election, the old directors shall hold their offices until their successors are elected and enter upon their duties. (G. S. 1878, ch. 34, § 404; 1881, ch. 15, § 1; Kelley's Stats., § 3127.)

See § 2816.

[A corporation has no other powers than those conferred by the statute creating it. Powers not conferred are deemed to be denied. *Ins. Co. v. Martin*, 13 Minn. 59.

Trading corporations may give promissory notes for an indebtedness contracted within the scope of their power, and the presumption is that notes given by such corporations are for such indebtedness. *Gebhard v. Eastman*, 7 Minn. 56.

So also a manufacturing corporation. *Sullivan v. Murphy*, 23 Minn. 6.

The authority of the president of a corporation to sign notes in its name does not extend to making one for the accommodation of a firm of which he is a member. *Bank v. Lumber Co.*, 44 Minn. 65; s. c., 46 N. W. Rep. 145.

When a corporation has power to incur debts to a limited extent, and to issue negotiable notes therefor, a bona fide holder of such notes may recover thereon, though the notes sued on exceed the limit of the indebtedness which the corporation may incur under its charter. *Auerbach v. Mill Co.*, 28 Minn. 291; s. c., 9 N. W. Rep. 799.]

## First meeting, how called.

§ 3408. The first meeting of all corporations, when no other provision is specially made, shall be called by notice, signed by one or more of the persons named in, or associated as corporators under, the law by which it is incorporated, setting forth the time, place and purposes of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper in the county where the corporation is established, or if no newspaper is published in the county, then in some newspaper printed and published at the capital of the State. (G. S. 1878, ch. 34, § 405; Kelley's Stats., § 3134.)

Meetings in general. § 2808, and cross-references.

## Meetings, how called; subscriptions — Gen. Stats., §§ 3409-3413.

[In absence of actual fraudulent intent, notice of meeting of stockholders or directors, given for the requisite time, is sufficient, even as to stockholder or director absent from country. *Jones v. Morrison*, 31 Minn. 140; s. c., 16 N. W. Rep. 854.]

## Meeting, when called by justice of the peace.

§ 3409. When, by reason of the death, absence, or other legal impediment of the officers of the corporation, there is no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established, may, on a written application of three or more of the members, issue a warrant to either of them, directing him to call a meeting, by giving such notice as had been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting, until a clerk is duly chosen and qualified, if no officer is present duly authorized to preside. (G. S. 1878, ch. 34, § 406; Kelley's Stats., § 3135.)

See § 2808. and cross-references.

## Powers at such meeting.

§ 3410. A corporation, when so assembled, may elect officers to fill all vacancies, and act upon such other business as may lawfully be transacted at a regular meeting. (G. S. 1878, ch. 34, § 407; Kelley's Stats., § 3136.)

## Waiver of irregularities at meeting.

§ 3411. When all the members of a corporation are present at any meeting, however called or notified, and sign a written assent thereto, on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified. (G. S. 1878, ch. 34, § 408; Kelley's Stats., § 3137.)

See § 2808, and cross-references.

## By-laws to provide what.

§ 3412. Corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers. They may annex suitable penalties to such by-laws, not exceeding twenty dollars for one offense. (G. S. 1878, ch. 34, § 409; Kelley's Stats., § 3129.)

See § 2816, subd. 4. and cross-references.

## Neglect of subscriber to pay subscription.

§ 3413. If any subscriber for the stock of any corporation neglects to pay any install-

ment of his subscription when lawfully required by the directors or other managing officer of the corporation, he shall forfeit such stock, and the same may be sold in such manner as the directors in their by-laws prescribe, and after paying the amount of the installment due or called for, and the expenses of sale, the balance of the proceeds of such sale shall be paid to such subscriber. An action may also be maintained against such subscriber upon his subscription. (G. S. 1878, ch. 34, § 410; Kelley's Stats., § 3131.)

See § 2815. Private property of stockholder liable for. § 2600.

[A subscription to stock, where the company undertakes nothing, not even to deliver the shares, is without consideration, and cannot be enforced. *Mining Co. v. Martin*, 13 Minn. 417.

And the mere fact that defendant signed a subscription to the capital stock with others will not supply the want of a consideration moving from the company. Id.

A subscription by a number of persons to the stock of a corporation thereafter to be formed by them constitutes a contract between the subscribers to become stockholders when the corporation is formed, upon the conditions expressed in the agreement, and is irrevocable from date of subscription; and is in the nature of a continuing offer to the proposed corporation, which, upon acceptance by it, becomes as to each subscriber a contract between him and the corporation. *Threshing Mach. Co. v. Davis*, 40 Minn. 110; s. c., 1 N. W. Rep. 1026.

And a delivery of a subscription by a subscriber to a promoter is a complete delivery, so that it becomes eo instanti a binding contract as between the subscribers. Id.

And such subscriber, after so delivering his subscription to a promoter, and after the corporation is organized and large sums of money have been expended by it, will not be allowed to defeat a recovery by showing that he attached a secret oral condition to the delivery. Id.

Defendant's liability on his subscription was held to attach at the time of its acceptance by board of directors of the plaintiff corporation and certain conditions of the subscription were not precedent to the plaintiff's right to assess the stock so subscribed and collect the assessments. *Hotel Co. v. Friedrick*, 26 Minn. 112; s. c., 1 N. W. Rep. 827.

A subscription to preferred stock held to be a valid contract both on the part of the subscriber and the company. *St. Paul, etc., Co. v. Robbins*, 23 Minn. 439.

Complaint to enforce calls for payment of subscriptions to stock, held good. *Machine Co. v. Crevier*, 39 Minn. 417; s. c., 40 N. W. Rep. 507.

In an action for unpaid installments on a stock subscription other than for the last installment, it is unnecessary to allege the issuance and delivery or tender of the shares of stock mentioned. *Harvester Works v. Libby*, 24 Minn. 327.

In an action by the assignee of an unpaid stock subscription to recover the same, complaint held insufficient. Id.

It is no defense to an action on a subscription for stock that the corporation has not delivered or tendered the certificate of stock, as the certificate is not the stock itself, but only a convenient representative of it. *Electric Co. v. Dixon*, 46 Minn. 463; s. c., 49 N. W. Rep. 244.

A provision in the charter that a certain amount of each share should be paid by each subscriber at the time of subscription may be waived by the corporation at pleasure. *Ry. Co. v. Bassett*, 20 Minn. 535.

A subscriber to capital stock is estopped in an action on the subscription to deny the power of the corporation to make the contract. *Electric Co. v. Dixon*, supra.]

## Stock and stock certificates — Gen. Stats., §§ 3414-3419.

**Power to convey land.**

§ 3414. Every corporation may convey lands to which it has a legal title. (G. S. 1878, ch. 34, § 411; Kelley's Stats., § 3128.)

See § 2798, and cross-references.

**2. Stock and Stock Certificates.****Stock not to be issued for less than par; preferred stock.**

§ 3415. Corporations having capital stock divided into shares, unless specially authorized, shall not issue any shares for a less amount to be actually paid in on each share than the par value of the shares first issued: Provided, That railroad, and navigation, and manufacturing corporations, and corporations for buying, holding, improving, selling, and dealing in lands, tenements, hereditaments, real, mixed, and personal estate and property, created or organized under this chapter, or under any charter or special act of incorporation heretofore passed, shall have power to create, issue and dispose of such an amount of special, preferred or full paid stock of the capital stock of such corporation as may be deemed advisable by the board of directors of such corporation.

Provided, That any corporation may, by its articles of incorporation or by any amended article of its articles of incorporation, provide for special, preferred and common stock, or special or preferred and common stock, of the capital stock of such corporation; and any corporation heretofore or hereafter organized without changing its articles of incorporation may issue its capital stock as a part special and a part preferred and a part common, or a part common and a part either special or preferred, by direction of its board of directors, when so authorized by a majority of its stockholders at its annual meeting or at a meeting called for that purpose; and said board of directors, when so authorized by said meeting of said stockholders, may give such preference as it may deem best to such special or preferred stock, or such special and preferred stock. (G. S. 1878, ch. 34, § 412; as amended by 1891, ch. 71.)

**Amount of capital stock.** § 2797. Officer issuing forged scrip. § 6699.

[By agreement of all stockholders, certain unissued stock was paid for with corporate funds, and issued to one of the stockholders, to be held in trust for all stockholders, in proportion to the amounts of their stock. There being no creditors of the corporation, such issue was valid, and directors had no authority afterward to order the stock to be sold. Jones v. Morrison, 31 Minn. 140; s. c., 16 N. W. Rep. 854.]

Nature of capital stock, and power of the corporation to use and dispose of it. Hospes v. Mfg. & Car Co., 50 N. W. Rep. 1117.

Upon the increase of capital stock, each stockholder has a right to an opportunity to take the new stock in proportion to the old stock held by him; and a vote at a stockholders' meeting directing the new stock to be sold, without giving a stockholder such opportunity, is void as to him

unless he consents to it. Jones v. Morrison, supra.]

**Certificates of stock.**

§ 3416. Any owner or holder of any shares of a corporation which issues certificates to such owners or holders when fees and dues are paid to such corporation shall be entitled to a certificate which shall show the number of shares to which he is entitled, and said certificate shall be prima facie evidence of such ownership. (1893, ch. 45, § 1.)

**When new certificates to be issued.**

§ 3417. If any such certificate be worn out or damaged then, upon the same being produced to the proper officers of said corporation issuing the same, and a demand being made, and an offer of surrender of such certificate so worn out or damaged, it shall be the duty of said corporation to issue to the party in whom such shares are vested a new and marketable one without requiring any indemnity. When any certificate is lost or destroyed upon proof thereof a new certificate shall be given upon sufficient indemnity being given to such corporation. If the evidence is clear that said certificate has been lost or destroyed and it has not been heard of for a period of seven years, it shall be the duty of said corporation to issue a new certificate without indemnity; and the secretary or other proper officers shall make record thereof in his register of shareholders and said corporation shall be relieved from all damages in reference thereto. (L. 1893, ch. 45, § 2.)

**Executors, etc., right to vote as stockholders.**

§ 3418. An executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote as a stockholder. (G. S. 1878, ch. 34, § 413; Kelley's Stats., § 3132.)

**Executors, etc., not to be personally liable.**

§ 3419. Persons holding stock in a corporation as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be, if they were respectively living and competent to act, and held the stock in their own names. (G. S. 1878, ch. 34, § 414; Kelley's Stats., § 3133.)

See § 2600, and cross-references.

[When a corporation cannot compel executor of one of its shareholders to deliver up certificates of stock for cancellation. Lumber Co. v. Mittelstadt, 43 Minn. 91; s. c., 44 N. W. Rep. 1079.]

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Foreign corporations — Gen. Stats., §§ 3420–3426.

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### 3. Foreign Corporations.

#### Foreign corporations for dealing in land.

§ 3420. Any foreign corporation which now is or hereafter may be created in whole or in part for the buying or selling of, or dealing in lands, in this State, or in the promotion of immigration to, or the settlement or occupation of any lands in this State, may loan its funds to persons, whether its members or not, and take and enforce securities therefor, and may acquire, take, hold, convey, use or occupy real, personal or mixed property of every name and nature, within this State, and make contracts and transact all lawful business, consistent with the objects and purposes of said corporation; and said corporation shall in all respects be subject to the laws of this State, and in all suits or proceedings by or against said corporation, it shall be deemed for all purposes a domestic corporation:

Provided, That no such corporation shall acquire or hold at any one time more than one hundred thousand (100,000) acres of land in this State, and that all lands acquired by it shall be sold within twenty-one (21) years after their acquisition, except such lands as may be acquired by it under mortgage foreclosure, or forfeiture of contracts for the sale thereof, which shall be disposed of by it within fifteen (15) years after such acquisition or forfeiture:

And provided further, Said corporation shall appoint an agent or attorney residing within this State, upon whom all process may be served, which appointment shall be filed in the office of the secretary of State. (1881, ch. 125, § 1; Kelley's Stats., § 2649.)

#### Removal of suits to United States court by foreign corporations.

§ 3421. Where, by the general or special laws of this State, relating or in any way appertaining to any foreign corporation, it is provided in substance or effect that in suits and proceedings upon causes of action arising in this State, in which such corporation shall be a party, such corporation shall be deemed to be a domestic corporation, it is hereby provided, that if such corporation shall make application to remove any such suit or proceedings into the United States circuit, or district or federal court, it shall be liable to a penalty of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each application so made and for each offense so committed for making such application, the same to be recovered by suit in the name of the State of Minnesota. The county attorney of the proper county may, and the attorney-general, upon any complaint being made to him, shall institute the necessary action to recover such penalty. (1885, ch. 183, § 1; Kelley's Stats., § 3152.)

[Above section construed. *Ins. Co. v. Brown*, 36 Minn. 108; s. c., 31 N. W. Rep. 54.]

#### Additional penalty.

§ 3422. In addition to the penalty above prescribed, such corporation shall forfeit all right to transact business within this State, and shall be liable to a penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) per day for each and every day that it shall do business within this State after such forfeiture, which penalty shall be collected in the manner provided for in the above and preceding section. (1885, ch. 183, § 2; Kelley's Stats., § 3153.)

#### Removal of cause by insurance company.

§ 3423. If any insurance company or association shall make application to remove any case from the State court into the United States district, circuit or federal court, or to any act or thing not authorized by law, all right of such company or association to transact any business whatever in this State shall cease, and it shall be the duty of the insurance commissioner, if the certificate mentioned in section three (3) of this act has been issued to such company or association, to revoke the same. (1885, ch. 183, § 3; Kelley's Stats., § 3154.)

#### Penalty.

§ 3424. If any insurance company or association shall make application to remove any case from the State court into the United States circuit or district or federal court, for each such application it shall be liable to the penalty provided for in section one (1) of this act, to be collected as therein provided for; and if such company or association shall, when not duly authorized, do or transact any business within this State, it shall forfeit and be liable to the penalty provided for in section two (2) of this act, to be collected as therein provided. (1885, ch. 183, § 5; Kelley's Stats., § 3155.)

#### Rights and liabilities of foreign corporation.

§ 3425. No foreign corporation now or hereafter doing business in this State shall have, possess or exercise any right, privileges or immunities not possessed by domestic corporations; but, unless otherwise provided by law, shall in all respects be deemed, if it shall remain in (this) State for sixty days next ensuing after the passage of this act, to be a domestic corporation, and entitled to all the rights, privileges and immunities of domestic corporations, subject to all laws of this State which are now in force or may be hereafter enacted. (L. 1885, ch. 183, § 6.)

#### Penalty for bringing action in federal court.

§ 3426. No foreign corporation shall commence, prosecute or maintain any action, suit or proceeding upon any cause of action

Foreign corporations; removal of causes to federal courts — Gen. Stats., §§ 3427-3429a.

arising within this State in the United States circuit, district or federal court, nor make application to remove any such a claim, suit or proceeding into any federal court nor do any other act not permitted to a domestic corporation. Any corporation that shall violate any of the provisions of this section shall forfeit and be liable to the penalty provided in section one (1) of this act (§ 3421, ante), to be collected as therein provided for; and if any such corporation shall thereafter transact any business within this State it shall forfeit and be liable to the penalty (provided) in section two (2) of this act (§ 3422, ante), to be recovered as herein provided. (L. 1885, ch. 183, § 7; Kelley's Stats., § 3159.)

#### Forfeiture for removal of cause.

§ 3427. Whenever any foreign corporation doing business in this State shall transfer any case from a State to a federal court, contrary to the provisions of this act, it shall thereby forfeit any permission or license, express or implied, heretofore granted, obtained or enjoyed, or hereafter to be granted, obtained or enjoyed, to do business in this State, and it shall thereafter be unlawful for any such company to do any business whatever in this State, and all rights, privileges, immunities or franchises heretofore granted to or enjoyed by, or which shall hereafter be granted to or enjoyed by any such company, shall thereupon and thereby be and stand revoked, denied and withdrawn. Every contract made by any such company, after its right to do business in this State shall have terminated as herein provided, shall be null and void: Provided, however, That such contract may be enforced by and in favor of any person who entered into said contract in good faith and without notice that said company's right to do business in this State had ceased. It shall be unlawful for any such railway company, after having taken a transfer of any case whereby, under the provisions of this act, its right to do business in this State shall have terminated, to run any locomotive, car or train of cars on any railway in this State, and it shall be liable for all damages done by it in the performance of said unlawful act to any person or property. (L. 1885, ch. 183, § 8; Kelley's Stats., § 3156.)

#### Certified copy of papers in case of transfer.

§ 3428. Whenever any case shall be transferred by any corporation the clerk of the court from which the transfer is taken shall immediately make a certified copy of the pleadings therein, and of the petition for removal, and of the order of removal, if any, and a certificate of the date of the filing of the petition, and of the date of the order of removal, if any, and transmit the same to the railroad commissioner of this State,

if the removal is taken by a railway or telegraph company, and to the commissioner of insurance, if the removal is taken by an insurance company, and to the secretary of State, if the removal is taken by any other company. Said officer shall preserve said papers in a convenient form for reference. (1885, ch. 183, § 9; Kelley's Stats., § 3157.)

#### Limitation of act.

§ 3429. Nothing in this act shall be construed to deny to any foreign corporation any right of removal or lay any penalty upon any removal taken by it which it might have taken had it been a domestic corporation. (1885, ch. 183, § 10; Kelley's Stats., § 3160.)

#### Foreign corporation to have office and appoint agent in State.

§ 3429a. Every corporation for pecuniary profit, organized in any other State, territory or country, before it shall be authorized or permitted to transact any business in this State, or to continue business herein, if already established, or to acquire, hold or dispose of property, real, personal or mixed, within this State, or sue or maintain any action at law or otherwise in any of the courts of this State, shall have and maintain a public office or place in this State for the transaction of its business, and shall appoint an agent, who shall reside in the county in which said public office is located, duly authorized to accept service of process and upon whom service of process may be had in any action to which said corporation may be a party, and service upon such agent shall be taken and held as due and personal service upon such corporation.

A duly-authenticated copy of the appointment of said agent shall be filed in the office of the secretary of State, and a certified copy thereof shall be prima facie evidence of the appointment and authority of such agent. (L. 1899, ch. 69, §§ 1, 2; taking effect July 1, 1899.)

The preceding and the following §§ 3429a-3429d are from L. 1899, ch. 69, the title of which is as follows:

An act to require every foreign corporation organized for pecuniary profit, now or hereafter doing business in this State, to have a public office in this State, at which to transact its business, and to appoint an agent duly authorized to accept service of process, and requiring such corporation to file its articles or certificates of incorporation with the secretary of State, and pay into the State treasury certain fees, providing penalties for a violation of the provisions of this act, and repealing chapter three hundred and thirty-two (332) of the general laws of the State of Minnesota for the year eighteen hundred and ninety-five (1895).

Foreign corporations; articles to be filed — L. 1899, ch. 69, §§ 3, 4.

**Foreign corporation to file articles; fees.**

§ 3429b. Every corporation for pecuniary profit, organized in any other State, territory or country, now or hereafter doing business within this State, shall file in the office of the secretary of State a copy of its charter or certificate or articles of incorporation, duly certified and authenticated by the proper authority; and the principal or agent in this State of the said corporation shall make and file with the secretary of this State, with the articles or certificates above provided for, a statement duly sworn to, showing the proportion of the capital stock of the said corporation which is represented by its property located and business transacted in this State; and such corporation shall be required to pay into the State treasury the sum of fifty dollars (\$50) for the first fifty thousand dollars (\$50,000) or fraction thereof of such proportion of capital stock, and the further sum of five dollars (\$5) for every additional ten thousand dollars (\$10,000) or fraction thereof of such proportion of capital stock, and no increase of the capital stock of any corporation shall be valid or effectual until such corporation shall have paid into the State treasury the sum of five dollars (\$5) for every ten thousand dollars (\$10,000) or fraction thereof of such increase of said proportion of capital stock of such corporation.

In determining the proportionate share of the capital stock of such corporation upon which it shall pay license fees as aforesaid, the business of said corporation transacted in and out of this State during the years immediately preceding the filing of its articles or certificates as above provided for shall be considered and control. Upon a compliance with the above provisions by the said corporation, the secretary of State shall execute and deliver to said corporation a certificate that said corporation has duly complied with the laws of this State, and is authorized to do business herein, stating the amount of its capital and of the proportion thereof which is represented in this State, and such certificate shall be prima facie evidence that the said corporation is entitled to all the rights and benefits of this act, and of the valid creation and incorporation of such corporation, and such corporation shall enjoy those rights and benefits for the period of thirty years from and after the date of such certificate, unless the charter or corporate existence of such corporation shall sooner expire under its own provisions or those of the State under whose laws it was created, and the right and privilege of such corporation to so transact business and acquire and hold property in this State, may be renewed for like periods by resiling its articles of incorporation with the secretary of State and by the payment of like fees whenever pursuant to the provisions of this act, its said right and privileges shall have expired. (L.

1899, ch. 69, § 3, as amended by L. 1899, ch. 70; taking effect April 7, 1899.)

**Penalty for failure to file articles, etc.**

§ 3429c. Every corporation for pecuniary profit, organized in any other State, territory or country now doing business in, or which may hereafter do business in this State, which shall neglect or fail to comply with the conditions of this act, shall be subject to a fine of one thousand (\$1,000) dollars, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of State immediately after October first (1st), eighteen hundred and ninety-nine (1899), and as often thereafter as he may be advised that corporations are doing business in contravention of this act, to report such fact to the county attorney of the county in which the business of such corporation is located, and the county attorney shall, as soon thereafter as practicable, institute proceedings to recover the fine hereinbefore provided for, which fine shall be paid into the State treasury; and no corporation which shall fail to comply with the provisions of this act can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort; Provided, That nothing in this act shall be taken or construed as releasing any such corporation from fully complying with any of the provisions of the existing laws of this State; and provided further, that the provisions of this act shall not apply to corporations engaged in an exclusively manufacturing business in this State; nor to drummers or traveling salesmen soliciting business in this State for corporations which are entirely non-residents; nor to any corporation engaged only in the business of loaning money or investing in securities in this State, including all business incidentally growing out of the same and the handling of such real estate and other property as may be taken by foreclosure or otherwise in liquidation of such loans or securities; and provided further, that none of the provisions of this act shall apply to or in any manner affect corporations which may be organized for the purpose of raising and improving live stock, cultivating and improving farms, garden or horticultural lands, growing sugar beets, or any corporation founded for the purpose of canning fruits or vegetables. Provided, That this act shall not apply to any foreign corporation heretofore duly licensed or authorized to transact business in this State and which has heretofore paid to the State treasurer the fees on capital stock required of domestic corporations under section 3391 of the compiled statutes of 1894, or any corporation whose sole business in this State is the transportation of freight or passengers, or both freight and passengers by

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Dissolution; appointment of receivers — Gen. Stats., §§ 3430-3433.

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water. (L. 1899, ch. 69, § 4; taking effect July 1, 1899.)

**Repeal:**

§ 3429d. That chapter 332 of the general laws of the State of Minnesota for the year 1895, entitled "An Act to provide for the appointment, by corporations created or organized under the laws of another State, of agents to receive service of summons," be and the same is hereby repealed. (L. 1899, ch. 69, § 5; taking effect July 1, 1899.)

**Transfer agent of foreign corporation to exhibit transfer-book and list of stock-holders.**

§ 3429e. The transfer agent in this State of any foreign or domestic corporation, whether such agent shall be a corporation or a natural person, shall at all times during the usual hour of transacting business, exhibit to any stockholder of such corporation, when required by him, the transfer-book and a list of the stockholders thereof if in their power to do so, and for every violation of the provisions of this section such agent, or any officer or clerk of such agent, shall forfeit the sum of two hundred and fifty dollars (\$250), to be recovered by the person to whom such refusal was made.

This section is from L. 1897, ch. 165, § 1, entitled "An act to compel the transfer agents of any foreign or domestic corporation doing business in this State to exhibit the transfer-book or list of stockholders of said corporation to any stockholder of the same." Approved April 21, 1897.

**4. Dissolution.****Application to district courts for dissolution.**

§ 3430. When a majority in number or interest of the members of a corporation desires to close their concerns, they may apply by petition to the district court of the county where the corporation has its principal place of business, setting forth in substance the grounds of their application; and the court, after such notice as it deems proper to all parties interested, may proceed to hear the matter, and, for reasonable cause, adjudge a dissolution of the corporation. Corporations so dissolved shall be deemed and held extinct, in all respects, as if their charters had expired by their own limitation:

Provided, That in case of the dissolution, under this section, of any bank incorporated under the laws of this State, a duly certified copy of the order of the court adjudging such dissolution shall be at once transmitted by said court to the State auditor or other officer having power to authorize the existence of banks, and such copy of such order shall be duly filed in the office of such State officer. (G. S. 1878, ch. 34,

§ 415, as amended 1887, ch. 70; Kelley's Stats., § 3149.)

Corporation may be dissolved by court. § 5970.

[Where the corporation is dissolved during the term of a lease, and it is disabled from performing under the lease, a cause of action accrues to the landlord for the recovery of all damages sustained thereby. Kalkhoff v. Nelson, 62 N. W. Rep. 332.]

**Continuance after dissolution.**

§ 3431. Corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall, nevertheless, continue bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which they were established. (G. S. 1878, ch. 34, § 416; Kelley's Stats., § 3143.)

**Appointment of receivers.**

§ 3432. When the charter of a corporation expires or is annulled, or the corporation is dissolved as provided herein, the district court of the county in which such corporation carries on its business, or has its principal place of business, on application of a creditor, stockholder or member, at any time within said three years, may appoint one or more persons receivers or trustees, to take charge of its estate and effects, and to collect the debts and property due and belonging to it, with power to prosecute and defend actions in the name of the corporation or otherwise, to appoint agents under them, and to do all other acts which might be done by such corporation if in being, that are necessary to the final settlement of the unfinished business of the corporation. The powers of such receivers may be continued as long as the court deems necessary for said purposes. (G. S. 1878, ch. 34, § 417; Kelley's Stats., § 3138.)

Appointment of receiver. §§ 5906, 5971. Receiver may be appointed, when. § 5351.

[In proceedings under sections 3138 et seq. the constitutional or statutory liability for corporate debts cannot be enforced. In re Ins. Co., 58 Minn. 180; s. c., 57 N. W. Rep. 468.

Where a general assignment of corporate assets for the benefit of creditors has been made, creditors are not entitled as of right to the appointment of a receiver to supersede the assignee, but they may maintain an action to enforce the personal liability of stockholder. Trust Co. v. Loan & Trust Co., 65 N. W. Rep. 78.]

**Powers of district court.**

§ 3433. Said court shall have jurisdiction, in equity, of the application, and of all questions arising in the proceedings thereon; and may make such orders, injunctions and judg-

Examination by attorney-general — Gen. Stats., §§ 3434–3436, 4161, 4162, 5155.

ments therein as justice and equity require. (G. S. 1878, ch. 34, § 418; Kelley's Stats., § 3139.)

#### Duties of receivers.

§ 3434. The receivers shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor; and if not, they shall distribute the same ratably among the creditors who prove their debts in the manner directed by the court. (G. S. 1878, ch. 34, § 419; Kelley's Stats., § 3140.)

Receiver, when appointed. § 3432.

#### Balance of assets; distribution.

§ 3435. If there is a balance remaining, after the payment of the debts, the receiver shall distribute and pay it to and among those who are justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives. (G. S. 1878, ch. 34, § 420; Kelley's Stats., § 3141.)

Duties of receiver. § 3434.

#### 5. Duty of Attorney-General.

##### Examination by attorney-general; duties as to.

§ 3436. The attorney-general, whenever required by the governor, shall examine into the affairs and condition of any corporation in this State, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature; and for that purpose the said attorney-general has power to administer all necessary oaths to the directors and officers of any corporation; and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition; and the legislature, or either branch thereof, has full power to examine into the affairs and condition of any corporation in this State, and at all times; and for that purpose any committee appointed by the legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers and stockholders of said corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers and documents. (G. S. 1878, ch. 34, § 421; Kelley's Stats., § 3144.)

A record to be kept. § 2800. Books open to inspection. § 2818.

#### CHAPTER 40.

##### Deeds, Mortgages and Other Conveyances.

Sec. 4161. Corporation may convey by agent.  
4162. Appointment of agent to be recorded.

##### Corporations may convey by agent.

§ 4161. \* \* \* Any corporation may convey its real estate by an agent appointed by resolution of its directors or governing board. (G. S. 1878, ch. 40, § 2, as amended by L. 1891, ch. 75, § 1, last sentence.)

See § 2798, and cross-references.

[Statute providing that every corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose, Sec. 3734. Corporations may sign petition for does not operate to prevent a conveyance by its chief officers. Morris v. Kell, 20 Minn. 531.

Where three agents are appointed by a corporation to tender payment and receive a conveyance of certain property in trust for the corporation, any one of the three may make such tender, for the act is merely ministerial. Sons of Temperance v. Brown, 11 Minn. 356.]

##### Appointment of agent to be recorded.

§ 4162. Whenever the corporators, members, stockholders, trustees or directors of any corporation, by a vote or resolution, appoint an agent to convey the real estate of such corporation, a copy of such vote or resolution, certified by the clerk or secretary of such corporation, may be recorded in the office of the register of deeds of the county in which the real estate to which such vote or resolution relates, is situated. And such vote or resolution, when so certified, or a transcript of such record duly certified, may be used in evidence in the same manner and with like effect as a conveyance recorded in such county. (G. S. 1878, ch. 40, § 3; Kelley's Stats., § 4111.)

See § 2798, and cross-references.

[Directors can act for the corporation only when assembled in a board meeting, and a deed of land of the corporation, executed by all the directors acting separately, and not as a board, and without authority from the board as such, is void both as a conveyance and as a contract to convey. Baldwin v. Canfield, 26 Minn. 43; s. c., 1 N. W. Rep. 261.]

#### CHAPTER 66.

##### Civil Actions.

- Tit. 2. Time of commencing.
- 4. Place of trial.
- 5. Service of summons.
- 6. Pleadings.
- 10. Garnishment.
- 11. Receivers.

##### TITLE II. TIME OF COMMENCING.

Sec. 5155. Limitation of action.

§ 5155. \* \* \* All the provisions of this title as to the time of the commencement of civil actions shall apply to municipal and all other corporations, with like power and effect as the same applies to natural persons. (G. S. 1878, ch. 66, § 25, as amended 1881

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Actions; place of trial; service of summons — Gen. Stats., §§ 5185, 5199, 5200.

[Ex. Sess.], ch. 24, § 1; Kelley's Stats., § 4696.)

See § 2816, subd. 1, and cross-references.

## TITLE IV. PLACE OF TRIAL.

Sec. 5185. When corporation is a party.

§ 5185. In all other cases,\* except when the State of Minnesota is plaintiff, the action shall be tried in the county in which the defendants, or any of them, shall reside at the commencement of the action; or if none of the parties shall reside or be found in the State, or the defendant be a foreign corporation, the same may be tried in any county which the plaintiff shall designate in his complaint, subject, however, to the power of the court to change the place of trial, in the cases provided by law. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expires, demand in writing that the trial be had in the proper county, and the place of trial shall be thereupon changed to the proper county, by the order of the court, unless the parties consent thereto: Provided, That in an action for the claim and delivery of personal property wrongfully taken, the action may be brought and maintained in the county where the wrongful taking occurred, or where the plaintiff resides. A corporation shall be deemed to reside in any county where it has an office, agent, or place of business, within the meaning of this section. The court may change the place of trial of actions included in this section, as provided by law, as in other actions: Provided, That where defendants reside in different counties and appear and answer by different attorneys, the action shall, on motion, be transferred to the county agreed on by such defendants, or which is designated by the largest number of defendants who join in an answer. (G. S. 1878, ch. 66, § 49; 1881 [Ex. Sess.], ch. 25, § 1; Kelley's Stats., § 4714.)

Foreign corporations may sue and be sued as domestic. § 3426; see, also, § 2816, and cross-references.

[Section construed. Olson v. Osborne, 30 Minn. 444; s. c., 15 N. W. Rep. 876.]

## TITLE V. SERVICE OF SUMMONS.

Sec. 5199. Summons, how served and on whom.  
 5200. Service on foreign corporation.  
 5202. Service on railroad corporation.  
 5203. Service on domestic corporation without resident officers.  
 5204. Service by publication.

**Summons, how served and on whom.**

§ 5199. The summons shall be served by delivering a copy thereof, as follows:

\*Except those relating to real property, attachments or enforcement of penalties and forfeitures.

First. If the action is against a corporation, to the president, or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof: Provided, That in case none of the officers named can be found within the State, of which the return of the sheriff that they cannot be found within his county shall be prima facie evidence, then the summons may be served by publication; but such service can be made in respect to a foreign corporation only when it has property within this State, or the cause of action arose therein; \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* (G. S. 1878, ch. 66, § 59; Kelley's Stats., § 4746.)

[The above section does not apply to foreign corporations. Sullivan v. Packet Co., 10 Minn. 386.

There is no reason why a service of writ of mandamus should not be made to the head officer or the select person of the joint-stock association whose duty it is to secure performance of the act required. State v. Adams Express Co., 68 N. W. Rep. 1085.

Service made on the general agent of a foreign joint-stock association, where there is no superior officer in the State, and all the officers and all the shareholders are non-residents, held sufficient. Id.

Evidence held to justify denial of a motion to set aside service of summons on the ground that the person served was neither an agent nor an officer of defendant corporation. Hess v. Mfg. Co., 68 N. W. Rep. 774.]

## Service on foreign corporations.

§ 5200. That the summons or any process in any civil action or proceeding wherein a foreign corporation or association is defendant, which has property within this State, or the cause of action arose therein, may be served by delivering a copy of such summons or process to the president, secretary or any other officer, or to any agent of such corporation or association; and such service shall be of the same force, effect and validity as like service upon domestic corporations; Provided, If any such corporation or association has, by an appointment in writing filed with the secretary of this State, appointed or designated some person or resident of this State upon whom summons or process can be served, such summons or process shall be served upon such person so designated; And provided further, That any such action or proceeding may be commenced and tried in any county in which the cause of action arose, subject to be removed for cause as in other cases. This act shall have full force and effect, notwithstanding any provisions of the general statutes or other law of the State inconsistent herewith. (G. S. 1878, ch. 66, § 60, as amended 1891, ch. 79, § 1.)

[Where a foreign corporation has no agency within the State, service of summons upon its general agent, who happens to be temporarily in the State, is sufficient, under above section. Guernsey v. Ins. Co., 13 Minn. 278.

To constitute a person an agent of a foreign corporation, upon whom service of the summons may be made, he must be one actually appointed

## Service of summons; pleadings — Gen. Stats., §§ 5202-5204, 5253.

by and representing the corporation, and not one created by mere construction or implication contrary to the intention of the parties. Mikolas v. Hiram Walker & Sons, 76 N. W. Rep. 36.]

**Service on railroad companies.**

§ 5202. The service of all process and papers in any civil action or proceeding, before any justice of the peace, or in the district court, against any railroad company within this State, may be made upon any acting ticket or freight agent of such company, within the county in which the action or proceeding shall be commenced, and shall be taken and held in all cases to be a legal service: Provided, That whenever any railroad company has appeared in an action by an attorney, thereafter such service shall be made upon the attorney of record. (G. S. 1878, ch. 66, § 62; Kelley's Stats., § 4748.)

**Service on domestic corporations without resident officers.**

§ 5203. Whenever any corporation created by the laws of this State, or late territory of Minnesota, does not have an officer in this State upon whom legal service of process can be made, of which the return of the sheriff shall be conclusive evidence, an action or proceeding against such corporation may be commenced in any county where the cause of action or proceeding may arise, or said corporation may have property; and service may be made upon such corporation by depositing a copy of the summons, writ or other process or citations, in any proceeding for the collection of unpaid personal property taxes, in the office of the secretary of State, which shall be taken, deemed and treated as personal service of such corporation: Provided, That whenever any process, writ, or citation against or affecting any corporation aforesaid is served on the secretary of State, the same shall be by duplicate copies, one of which shall be filed in the office of said secretary of State, and the other by him immediately mailed, postage prepaid, to the office of the company, or to the president, secretary, or any director or officer of said corporation, as may appear or be ascertained by said secretary from the articles of incorporation on file in his office. (G. S. 1878, ch. 66, § 63, as amended by L. 1885, ch. 62; Kelley's Stats., § 4749.)

[Affidavit of secretary of State held to show a proper service on a domestic corporation. Town of Hinckley v. Kettle River R. Co., 72 N. W. Rep. 835.]

**Service by publication.**

§ 5204. When the defendant cannot be found within the State, of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence, and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes

that the defendant is not a resident of the State, or cannot be found therein, and that he has deposited a copy of the summons in the post-office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or his attorney in either of the following cases:

First. When the defendant is a foreign corporation, and has property within this State.  
\* \* \* \* \* \* \* \* \* \* \* \* \*  
(G. S. 1878, ch. 66, § 64; 1881, ch. 28, § 1; Kelley's Stats., § 4753.)

[Statement in affidavit "that defendant is a corporation or company, established and doing business under and by virtue of the laws of the State of Illinois," sufficiently shows his corporate character. Broome v. Packett Co., 9 Minn. 239.]

An affidavit for publication of summons which shows defendant to be a foreign corporation sufficiently shows that it cannot be found within the State. *Id.*]

**TITLE VI. PLEADINGS.**

Sec. 5253. Pleading existence of corporation.  
5254. Proof unnecessary.  
5256. Denial must be positive.

**Pleading existence of corporation.**

§ 5253. In actions by or against corporations, domestic or foreign, it shall in any pleading be a sufficient allegation that the plaintiff or defendant is a corporation, to aver substantially that the plaintiff or defendant, as the case may be, is a corporation duly organized and created under the laws of the State, territory or government by which it may have been incorporated. (G. S. 1878, ch. 66, § 111; Kelley's Stats., § 4796.)

See § 2816, subd. 1, and cross-references.

[An averment in an indictment for the larceny of warehouse receipts issued by a railroad company, which alleges that the company was "a corporation in the State of Minnesota, duly established and organized under and by virtue of the laws thereof," is a sufficient averment of corporate existence, without alleging whether it was incorporated under private statute or the general laws. *State v. Loomis*, 27 Minn. 521; s. c., 8 N. W. Rep. 758.]

Where a corporation is declared such by the act incorporating it, it is not necessary to allege in pleading that the charter has been accepted. *Sons of Temperance v. Brown*, 9 Minn. 157.

An allegation as to corporate existence of a defendant being stated in the complaint before the causes of action, it is unnecessary to repeat such allegation for each cause of action. *West v. Eureka Imp. Co.*, 40 Minn. 394; s. c., 42 N. W. Rep. 87.

Recognition and admission of corporate existence by contracting and dealing with an alleged corporation, as such, are *prima facie* evidence of its incorporation, in an action by it against the party so dealing with it, brought on contracts made on the faith of such transaction. *Mfg. Co. v. Donohue*, 29 Minn. 111; s. c., 12 N. W. Rep. 354.

An allegation in a pleading that a party is a corporation "constituted and organized under the laws of the State of Minnesota" is a sufficient allegation of corporate existence under above section. *Dodge v. Roofing Co.*, 14 Minn. 49.

One becoming a stockholder in a *de facto* corporation held estopped to question its existence. *Hause v. Mannheimer*, 69 N. W. Rep. 810.

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Pleadings; garnishment — Gen. Stats., §§ 5254, 5256, 5311, 5351.

Corporate existence need not be alleged where it does not constitute a part of the cause of action. Holden v. Elevator Co., 72 N. W. Rep. 805.

**Pleadings Generally.**—Where a complaint on a promissory note given by a corporation refers to a charter which shows a corporation competent to make notes, it is not necessary to allege the facts showing for what such note was given. Gebhard v. Eastman, 7 Minn. 56.

An admission of the making of a contract by defendant is also an admission of its capacity to make the contract, and a verdict for plaintiff should not be set aside because complaint did not allege that defendant was a corporation. Monson v. Ry. Co., 34 Minn. 269; s. c., 25 N. W. Rep. 595.

The admission of the execution of a contract by a corporation includes an admission of the power to make it, and of the authority of the officer or agent who executed it in its behalf. Bausman v. Credit Guarantee Co., 47 Minn. 377; s. c., 50 N. W. Rep. 496.

A complaint by a corporation for the enforcement of a contract made by it with the defendant need not allege that plaintiff was empowered to make the contract. Mill Co. v. Bennewitz, 28 Minn. 62; s. c., 9 N. W. Rep. 80; Land Co. v. Dayton, 37 Minn. 364; s. c., 34 N. W. Rep. 335.

A complaint upon a contract made by a corporation with the defendant, setting forth the contract in terms, which appears to have been made in its behalf by its president, sufficiently shows that the president was authorized to make the contract. Id.

In an action ex delicto against a corporation it is not necessary to allege that the acts complained of were committed by agents of the corporation, but it may be averred that they were committed by the corporation itself. Gould v. Eagle Creek School District, 7 Minn. 203.

In an action by individual stockholders for fraudulent issue of bonds, which act is prejudicial to the interests of the corporation, complaint must show that it was impracticable for plaintiffs to move the corporation itself to bring the action. Hodgson v. D. H. & D. R. Co., 46 Minn. 454; s. c., 49 N. W. Rep. 197.]

### When proof unnecessary.

§ 5254. In all actions brought by or against a corporation, it shall not be necessary to prove on the trial of the cause the existence of such corporation, unless the defendant shall in his answer expressly aver that the plaintiff or defendant is not a corporation. (G. S. 1878, ch. 66, § 112; Kelley's Stats., § 4797.)

See §§ 2816, subd. 1, 5256, 5761.

[A continued exercise of corporate franchises by persons claiming to be directors and officers of a corporation, without objection, is evidence of the continued existence of such corporation, and that such persons were directors and officers. Ins. Co. v. Allis, 24 Minn. 75.

An admission that a corporation is legally organized raises the presumption that it has acted within its corporate powers, and the question whether its acts are ultra vires can be raised only by the State, and not by a private person not a stockholder. Baker v. Guaranty Loan Co., 36 Minn. 185; s. c., 30 N. W. Rep. 464.

In an action by a corporation to enforce a contract, an allegation of the answer denying plaintiff's corporate character is immaterial. Land Co. v. Dayton, 39 Minn. 315; s. c., 40 N. W. Rep. 66.

A denial in the answer of knowledge or information sufficient to form a belief as to whether plaintiff is a corporation will not impose on plaintiff the necessity of proving its corporate existence, under above section. Bank v. Loyhed, 28 Minn. 396; s. c., 10 N. W. Rep. 421.

A written contract by defendant with plaintiff by its corporate name, held prima facie proof against defendant of the existence of the cor-

poration. Continental Ins. Co. v. Richardson, 72 N. W. Rep. 458.

Oral testimony held admissible to establish existence of a corporation de facto. Johnson v. Schulin, 73 N. W. Rep. 147.

A corporation de facto exists where there is a law authorizing its creation, an attempt to organize and user. Id.

Members of an association can testify that they always claimed to plaintiff that it was a corporation. Id.

In an action brought by a foreign corporation it is not incumbent upon such corporation to show that it has complied with the statutes of this State and has obtained a certificate of authority to transact business within its borders. Non-compliance with the law in reference to obtaining such a certificate is a matter of defense. Langworthy v. Garding, 77 N. W. Rep. 207.]

### Denial must be positive.

§ 5256. In all actions herein named, an averment in the answer, upon information and belief, shall not be construed as an express averment that the plaintiff or defendant is not a corporation, \* \* \* (G. S. 1878, ch. 66, § 114; Kelley's Stats., § 4799.)

See § 5761.

[In an action on a written instrument wherein defendant has contracted with plaintiff, designated therein by a corporate name, it is itself sufficient *prima facie* proof against defendant, in the nature of an admission of the right of the person represented by that name to enforce the contract by action. Harvester Co. v. Clark, 30 Minn. 308; s. c., 15 N. W. Rep. 252.]

## TITLE X. GARNISHMENT.

Sec. 5311. Garnishment of corporations.

### Garnishment of corporations.

§ 5311. Corporations may be summoned as garnissees, and may appear by their cashier, treasurer, secretary, or such officer as they may appoint, and the disclosure of such person or officer shall be considered the disclosure of the corporation; Provided, That if it appears to the court that some other member or officer of the corporation is better acquainted with the subject-matter than the one making disclosure, the court may cite in such person to make answer in the premises; and in case such person neglects or refuses to attend, judgment may be entered as hereinafter provided upon default; and service of the summons upon the agent of any corporation not located in this State, but doing business therein through such agent, shall be a valid service upon said corporation. (G. S. 1878, ch. 66, § 169; Kelley's Stats., § 5002.)

See § 2816, subd. 1, and cross-references.

## TITLE XII. RECEIVERS.

Sec. 5351. When receiver may be appointed.

### When receiver may be appointed.

§ 5351. A receiver may be appointed:

\* \* \* \* \*

Fourth. In the cases provided by law, when a corporation has been dissolved, or is insolvent, or in imminent danger of in-

## Form of acknowledgments — Gen. Stats., §§ 5650, 5650a, 5650b.

solvency, or has forfeited its corporate rights; and, in like cases, of the property, within this State, of foreign corporations. (G. S. 1878, ch. 66, § 207; Kelley's Stats., § 5044.)

See § 3432, and cross-references.

## CHAPTER 72.

## Oaths and Acknowledgments.

## TITLE II. ACKNOWLEDGMENTS.

Sec. 5650. Forms.

Forms.

§ 5650. The following forms of acknowledgments may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified, shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

(Begin in all cases by a caption specifying the State and place where the acknowledgment is taken.)

\* \* \* \* \*

3. In the case of incorporations or joint-stock associations:

On this ..... day of ....., 18.., before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation, (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors, (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [or association] and that," and add, at the end of the affidavit clause, the words, "and that said corporation [or association] has no corporate seal.")

Any acknowledgment by or on behalf of a corporation made substantially in the form herein prescribed shall be prima facie evidence of the facts therein recited, and that such conveyance or instrument was executed by authority of its board of directors or trustees, and that such corporation was competent and authorized to make such conveyance. (In all cases add signature and title of the officer taking the acknowledgment.) (1883, ch. 99, § 1, as amended by 1889, ch. 118, § 1; Kelley's Stats., § 4292.)

[Where the common seal of a corporation is affixed to an instrument, and the signatures of the proper officers are proved, the court will presume that the seal was affixed by proper authority. Morris v. Kell, 20 Minn. 531; Melghen v. Strong, 6 Id. 177, distinguished, id.]

The deed of a corporation having been signed by its president and attested by its secretary, who attached the corporate seal, the latter is the proper person to make the affidavit required by above section, to prove that the seal was the corporate seal, and that it was affixed by authority of the board of directors. Bowers v. Hechtman, 45 Minn. 238; s. c., 47 N. W. Rep. 792.

The acknowledgment of a corporate deed can only be made by some officer or representative having authority to execute it, and from the certificate it must appear that the person making the acknowledgment was so authorized. Bennett v. Knowles, 68 N. W. Rep. 111.]

## Acts legalizing transfers of real property by corporations.

§ 5650a. That in all cases where an attempt has heretofore been made to form, organize or renew any corporation under any of the general laws or statutes of the State of Minnesota, and the persons attempting to form, organize or renew any corporation have actually adopted, signed and filed in the office of the secretary of State, articles of incorporation in which the business therein specified was such as might be lawfully carried on under said laws by such corporation, and have in fact issued stock and transacted business under the corporate name therein assumed, and have in good faith received or transferred any property, real or personal, such attempted formation, organization or renewal in each and every such case is hereby legalized and declared valid and effectual under the name assumed as an incorporation under the laws of the State of Minnesota, notwithstanding the omission of any matter, thing or requirement by law prescribed to be done or observed in such formation, organization or renewal thereof. And any and all conveyances of property, real or personal, in good faith and lawful form made to or by any such body under the corporate name so assumed are hereby legalized and declared as valid and effectual for the purposes intended thereby as if such body corporate had been originally, in all things duly and legally incorporated. Provided, That this act shall not apply to any suits now pending, involving the validity of such organization. Provided, That this act shall not have the effect of reviving or renewing any corporation which has expired by limitation of time or shall have been dissolved by any court of competent jurisdiction. (L. 1895, ch. 330; approved April 26, 1895.)

## Act legalizing acknowledgments by corporation.

§ 5650b. (§ 1.) That all deeds heretofore made by the officers of corporations created by or under the laws of this State of any real estate belonging to said corporation, and which deed or deeds such officers act in their official capacity as officers thereof, intending to convey the property therein described as the property of such corporation, shall be valid conveyance thereof, and to all such property, notwithstanding

Examination of officers of corporations; real property — Gen. Stats., §§ 5659, 5761, 5816.

standing the fact that in the body of any such instrument or instruments the names of such officers appear instead of the name of such corporation, and the same and all such are hereby legalized and confirmed so far as it relates to any question of defect by reason of such officers' names appearing in the body of such instrument or instruments, instead of the corporate name of such corporation, nor shall said deed or deeds be invalid by reason of the absence of witnesses to the signature of such officers, nor shall the same be invalid by reason of the failure of the wife of any such officer to join in said deed, but the same and all such are hereby declared to be valid conveyance of any such real estate therein described.

§ 2. That all such instruments of the description in the preceding section shall be entitled to be recorded in the office of the register of deeds of the proper county in the same manner and upon the same conditions and be subject in all respects to the same rules of law as other deeds.

§ 3. The provisions of this act shall not apply to any action or proceeding now pending in any court in this State. (L. 1897, ch. 238; approved April 23, 1897.)

### CHAPTER 73.

#### Witnesses and Evidence.

##### Examination of officers of corporations.

§ 5659. A party to the record of any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent or managing agents of any corporation which is a party to the record in such action or proceeding, may be examined upon the trial thereof as if under cross-examination at the instance of the adverse party or parties or any of them, and for that purpose may be compelled in the same manner and subject to the same rules for examination as any other witness to testify, but the party calling for such examination shall not be concluded thereby, but may rebut it by counter testimony. (1885, ch. 193, § 1, as amended by 1893, ch. 105, § 1.)

See § 2667, subd. 1, and cross-references.

##### Evidence of existence of corporation in actions on promissory notes.

§ 5761. In all actions brought by any corporation, \* \* \* or by the indorsers of any such corporation \* \* \* upon any promissory note, bill of exchange, or other written instrument for the payment of money only, executed and delivered by the defendant to such corporation by its corporate name, \* \* \* the production in evidence of the instrument upon which such action is brought shall be prima facie evidence of the existence of such corporation, \* \* \* (G. S. 1878, ch. 73, § 98; Kelley's Stats., § 5117.)

### CHAPTER 75.

#### Estates in Real Property; Restrictions of Ownership to Citizens.

Sec. 5816. Appointment by non-resident, of agent to accept service.

5876. Restrictions on corporations in which aliens are stockholders.

5877. Power to hold real property.

5878. Forfeiture of lands illegally held.

##### Appointment by non-resident, of agent to accept service.

§ 5816. Any person or persons, copartnership or corporation, not resident of this State, owning or claiming any interest in or lien upon any lands lying within this State, may file in the office of the secretary of State of the State of Minnesota, a written agreement, duly executed and acknowledged in the manner provided by law for the execution and acknowledgment of deeds, thereby stipulating and agreeing upon the part of the party or parties executing the same, that service of process and summons in any action or proceeding concerning such real estate, or any interest therein or lien thereon, hereafter commenced in any of the courts of this State, in which such owner or claimant shall be made a party, may be made upon such agent or agents as shall be designated in such agreement, who shall be resident of this State; and authorizing such agent or agents for such party or parties to admit such service of process or summons upon him or them; and agreeing that the service of process or summons upon such agent or agents shall be valid and binding upon such party or parties. Such agreement shall designate such agent or agents, and the place of residence of such agent or agents, and shall be recorded in the office of the secretary of State, in a book to be provided for that purpose, and he shall be entitled to demand and receive, for the filing and recording thereof, and of any revocation thereof, a fee of fifteen cents for each folio of one hundred words contained therein. Service of process or summons, or of any writ or notice in such action, shall be made upon the person or persons so designated as such agent or agents, in the manner provided by law for the service of process upon persons residing in the State, and shall be held and deemed a valid and effectual service thereof upon such owner or claimant in like manner, and shall have the same effect in all respects as if served personally upon such owner or claimant within this State; but where such party in the action appears by his attorney therein, the service of papers shall be upon the attorney, instead of the party, as by law provided. The original record of such agreement, or a duly certified copy of such record thereof, shall be deemed and taken to be sufficient evidence thereof; and no service by publication of summons in such action shall be made upon any person or persons, copartnership or corporation, non-resident of this State, who shall have made and had recorded

Real property; actions respecting corporations — Gen. Stats., §§ 5876-5878, 5889

such agreement in accordance with the provisions hereof, while the same shall remain in force and unrevoked: Provided, That no agreement made under the provisions of this act shall in anywise affect any action or proceeding commenced prior to the taking thereof; and provided further, that such owner or claimant may at any time revoke or amend any such agreement made by him or them; but such revocation shall in no wise affect any action or proceeding which shall have been commenced prior to the recording of such revocation, which shall be executed, acknowledged and recorded in like manner as hereinbefore provided in respect to the original agreement: provided further, that this act, or anything therein contained, shall not apply to nor in anywise affect any action or proceeding for the collection of any tax, general or special. (G. S. 1878, ch. 75, § 1; Kelley's Stats., § 4752.)

#### **Restrictions on corporations in which aliens are stockholders.**

§ 5876. That no corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States, shall hereafter acquire, or shall hold or own any real estate hereafter acquired in this State. (1887, ch. 204, § 2, as amended 1889, ch. 113, § 2; Kelley's Stats., § 3994.)

See § 2668, and cross-references.

[Where a corporation is organized under the laws of this State, it will be presumed, until the contrary appears, that a sufficient percentage of its stockholders are citizens so as to authorize it to acquire realty. Northwestern Tel. Exch. Co. v. Chicago, etc., Ry. Co., 79 N. W. Rep. 315.]

#### **Power to hold real property.**

§ 5877. No corporation other than those organized for the construction or operation of railways, canals or turnpikes, shall acquire, hold or own, over five thousand acres of land, so hereafter acquired in this State; and no railroad, canal or turnpike corporation shall hereafter acquire, hold or own lands so hereafter acquired in this State other than as may be necessary for the proper operation of its railroad, canal or turnpike, except such lands as may have been granted to it by act of congress or of the legislature of this State. (1887, ch. 204, § 3, as amended by L. 1889, ch. 129, § 3; Kelley's Stats., § 3998.)

#### **Forfeiture of lands illegally held.**

§ 5878. All property acquired, held or owned in violation of the provisions of this act shall be forfeited to this State, and it shall be the duty of the attorney-general of the State to enforce every such forfeiture by due process of law. Provided, however, that no such forfeiture shall be made unless

the action to enforce such forfeiture shall be brought within three years after such real estate has been acquired by such alien or corporation, and provided, further, that no title to real estate standing in the name of a citizen of the United States, or any one who has declared his intention of becoming such a citizen shall be liable to forfeiture by reason of the alienage of any former owner or person interested therein. Provided, further, that none of the provisions of this act shall be construed to apply to lands acquired, held or obtained by process of law in the collection of debts, or by any procedure for the enforcement of any lien or claim thereon, whether created by mortgage or otherwise. (1887, ch. 204, § 4, as amended by L. 1889, ch. 129, § 4.)

### **CHAPTER 76.**

#### **Actions Respecting Corporations.**

- Sec. 5889. Chapter embraces all corporations.
- 5890. Foreign corporations may sue.
- 5891. Limitation on actions by foreign corporations.
- 5892. Actions against corporations, how commenced.
- 5893. Injunction to restrain usurpation of corporate powers.
- 5894. Injunction before answer.
- 5895. Power of district court over corporate officers.
- 5896. Construction of preceding section.
- 5897. Return of execution unsatisfied; sequestration.
- 5898. Sequestration; order of distribution.
- 5899. Action for dissolution of railroad and other companies.
- 5904. Supplemental complaint by creditor.
- 5905. Action by creditor against stockholder, etc.
- 5906. Account; appointment of receiver.
- 5907. Proceedings when corporation is proved insolvent.
- 5908. Distribution of assets.
- 5908a. Suits against receivers.
- 5909. Collection of dues on subscriptions.
- 5910. Judgment against officers and stockholders.
- 5911. Notice to creditors to exhibit claims.

#### **Enforcement of Liability of Stockholders.**

- Sec. 5911a. Procedure to enforce liability.
- 5911b. Hearing; notice.
- 5911c. Proof of indebtedness and assets; assessment of stockholders.
- 5911d. Action to collect assessment.
- 5911e. Assessment conclusive.
- 5911f. Receiver, when to bring action to recover assessment.
- 5911g. Additional assessment, when made.
- 5911h. Application of act to all assessments.
- 5911i. Joinder of actions.
- 5911j. Proceeding to compel receiver to recover assessment.
- 5911k. Distribution after payment of debts; contribution.
- 5911l. Actions to collect assessments against stockholders who were not parties.
- 5911m. Application of act.
- 5911n. Enforcement of liability of stockholders, directors, trustees, etc., by assignees or receivers.

Chapter embraces all corporations.

§ 5889. This chapter embraces all corporations, including in such designation all associations having any corporate rights, whether created by special acts or under

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Actions respecting corporations; injunction, etc.—Gen. Stats., §§ 5890–5895.

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general laws. (G. S. 1878, ch. 76, § 1; Kelley's Stats., § 5554.)

#### Foreign corporations may sue.

§ 5890. A foreign corporation may prosecute in the courts of this State, in the same manner as corporations created under the laws thereof. (G. S. 1878, ch. 76, § 5555.)

#### Limitation in actions by foreign corporations.

§ 5891. A foreign corporation cannot maintain an action in this State upon an obligation or liability arising out of, or in consideration of, an act which is contrary to the law or policy of the State, or which is thereby forbidden in respect to corporations or associations therein whose general business is similar to that of such foreign corporation. (G. S. 1878, ch. 76, § 3; Kelley's Stats., § 5556.)

#### Actions against corporations, how commenced.

§ 5892. Actions may be commenced against corporations, whether created under the laws of this State, or any other State or country, except as otherwise expressly provided, in the same manner as other civil actions; and where service of summons is made according to the statute, the plaintiff may proceed thereupon in the same manner as in civil actions against natural persons. (G. S. 1878, ch. 76, § 4; Kelley's Stats., § 5562.)

[A stockholder who assents to an ultra vires contract cannot afterward sue to annul it. *Stewart v. Transportation Co.*, 17 Minn. 372.

A court of equity will not entertain an action by a stockholder to prevent the carrying out of a contract made by the corporation, when the latter itself refuses to act upon, and repudiate the same. *Id.*

If a plaintiff bringing an equitable action as stockholder, to protect his stock, is a legal stockholder it is immaterial whether or not he became such upon a bona fide subscription to the stock of the company. *Id.*

Plaintiff brought an action for lands against a corporation of which he claimed to be president, and have summons served upon himself as such president, and upon another person as secretary. Held, that certain stockholders should have been served with summons and permitted to answer. *Morrill v. Mfg. Co.*, 46 Minn. 260; s. c., 48 N. W. Rep. 1124.]

#### Injunction to restrain usurpation of corporate powers.

§ 5893. Upon a complaint filed under the direction of the attorney-general in any district court, such court has power to restrain, by injunction, any corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by the act by or under which such corporation was created, and to restrain any individuals from exercising any corporate rights, privileges or franchises not granted to them by law. (G. S. 1878, ch. 76, § 5; Kelley's Stats., § 5559.)

#### Injunction before answer.

§ 5894. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendant complained of has usurped, exercised or claimed any franchise, privilege, liberty, or corporate right not granted to it. (G. S. 1878, ch. 76, § 6; Kelley's Stats., § 5560.)

#### Power of district court over corporate officers.

§ 5895. The district court may compel the officers of any corporation —

First. To account for their official conduct in the management and disposition of the funds and property committed to their charge;

Second. May decree and compel payment by them, to the corporation which they represent, and to its creditors, of all sums of money, and of the value of all property, which they have acquired to themselves, or transferred to others, or have lost or wasted by any violation of their duties as such officers;

Third. May suspend any such trustee or other officer from exercising his office, whenever it appears that he has abused his trust;

Fourth. May remove any trustee or officer from his office, upon proof or conviction of gross misconduct;

Fifth. (As amended April 18, 1893.) May direct, if necessary, a new election to be held, by the body or board duly authorized for that purpose, to supply any vacancy created by such removal; Provided, that in case of the removal of a director or directors, or trustee or trustees, or other officer, the election shall be conducted under and pursuant to the order, direction and control of the court by a disinterested person appointed by the court; and, provided further, that in case of the removal of a majority of the directors or trustees, the court may appoint a person who shall act as temporary receiver of the corporation until a new election shall be held and the newly elected directors or trustees shall have qualified. Said receiver shall give a bond in such amount as the court may require and shall continue the business of the corporation under and pursuant to the order, direction and control of the court. An appeal from an order or judgment removing an officer or trustee shall not operate to stay the effect thereof or proceedings thereunder, but the term of office of any officer, director or trustees so elected to fill any vacancy, or of any receiver so appointed by the court, shall be terminated by a reversal or vacation of said order or judgment by the supreme court.

Sixth. May set aside all alienations of property made by the trustees or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving

## Actions against corporations; sequestration — Gen. Stats., §§ 5896–5899.

such alienation knew the purpose for which the same was made; and

Seventh. May restrain and prevent any such alienation, in cases where it is threatened, or there is good reason to apprehend that it is intended. (G. S. 1878, ch. 76, § 7, as amended by 1893, ch. 88, § 1.)

[Right of corporate creditor, suffering loss peculiar to himself through an officer's neglect of duty, to maintain an action at law against the latter. *Bank v. Harper*, 63 N. W. Rep. 1079; *Bank v. Loan Co.*, id.]

When the managers and majority of the stockholders divert the company and its property from their legitimate purposes, for the benefit of one of such majority, a minority stockholder may bring suit without applying to have suit brought in the name of the corporation. *Rothwell v. Robinson*, 39 Minn. 1; s. c., 38 N. W. Rep. 772.

In an action by one stockholder against the rest for an accounting and appointment of receiver, petition denied on the facts proven. *Rothwell v. Robinson*, 44 Minn. 538; s. c., 47 N. W. Rep. 255.

An action to recover a corporate debt from corporate officers on the ground of fraud, held not an action for a penalty which is triable in the county where the cause of action accrued. *Flowers v. Bartlett*, 68 N. W. Rep. 976.

The rule that a corporation, by its officers, is the proper party to maintain an action to protect its property and enforce its rights, and that, until the corporation refuses or is unable, individual members have no right to litigate for it, has no application where it appears from the complaint that the officers of the corporation are engaged in perpetrating a fraud upon its members, and grossly mismanaging the corporate affairs. Under such circumstances members of the corporation can maintain an action against it and its officers. *Pencille v. State Farmers Mut. Hall Ins. Co.*, 76 N. W. Rep. 1026.]

## Construction of preceding section.

§ 5896. Whenever any visitatorial powers over any corporation are vested by statute in any corporate body or public officer, the provisions of the preceding section shall not be construed to impair the powers so vested. (G. S. 1878, ch. 76, § 8; Kelley's Stats. § 5558.)

## Return of execution unsatisfied; sequestration.

§ 5897. Whenever a judgment is obtained against any corporation incorporated under the laws of this State, and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment, or his representatives, the district court within the proper county may sequester the stock, property, things in action and effects of such corporation, and appoint a receiver of the same.

[An insolvent corporation cannot, by making an assignment under the insolvent laws, defeat a proceeding instituted for the receiver under above section. *State v. Bank*, 55 Minn. 139; s. c., 56 N. W. Rep. 575.

A receiver cannot be appointed for a corporation, other than a bank or insurance company, on the application of a creditor who has not first executed his legal remedies as required by section 5572. *Klee v. Steele Co.*, 62 N. W. Rep. 399.

In an action against a corporation to collect and convert its assets and apportion them among creditors under this chapter, the individual liability of stockholders may be enforced upon the

application of any creditor who is a party to the proceedings, although the complaint of the judgment creditor who instituted them, did not demand any such relief. *Arthur v. Willius*, 44 Minn. 409; s. c., 46 N. W. Rep. 851.

The individual liability of stockholders, imposed by Const. art. X, § 3, may be enforced in a sequestration proceeding against the corporation under this chapter, upon the application of any creditor who has become a party to the proceedings. *Arthur v. Willius*, 44 Minn. 409; s. c., 46 N. W. Rep. 851; *McKusick v. Seymour*, 50 id. 1114.

The equitable right of creditor of an insolvent corporation to compel the holders to pay for "bonus" stock may be enforced in a sequestration proceeding under this chapter, upon the complaint of any interested creditor who has become a party to the proceeding. *Hospes v. Mfg. & Car Co.*, 50 N. W. Rep. 1117.

Where execution against a corporation has been returned unsatisfied, and a receiver has been appointed for all corporate property, a creditor of the corporation who recovers damages against it after the property is thus taken into custody has no right to redeem real estate sold by the receiver under direction of the court. *Watkins v. Mfg. Co.*, 41 Minn. 150; s. c., 42 N. W. Rep. 862.]

## Sequestration; order of distribution.

§ 5898. Upon a final judgment on any such complaint, the court shall cause a just and fair distribution of the property of all such corporations, and of the proceeds thereof, not distributed prior to the passage of this act, to be made in the following manner: After the payment of costs, debts due the United States, the State of Minnesota, all taxes or assignments levied and unpaid, expenses of the receivership and executing the trust, the receiver shall pay in full, if sufficient there remains for that purpose, the claims duly proven of all servants, clerks, or laborers for personal services or wages owing from such corporation, for services performed for the three months preceding the appointment of a receiver of such corporation as provided in section nine (9) and the balance of said estate shall then be distributed among the general creditors of such corporation under the direction of the court. (G. S. 1878, ch. 76, § 10, as amended by L. 1887, ch. 25.)

## Action for dissolution of railroad and other companies.

§ 5899. Whenever any railroad company doing business in this State shall charge, demand or receive unreasonable rates for the transportation of freight or passengers over any portion of its line of railroad, or violate any of the provisions of its act or acts of incorporation, or any other law binding upon such corporation, or if any incorporated company remain insolvent for one year, or for one year neglects or refuses to discharge its notes or other evidence of debt, or for one year suspends the lawful business of such corporation, such company or corporation shall be deemed to have forfeited the rights, privileges and franchises granted by any act or acts of incorporation, or acquired under the laws of this State, and shall be adjudged to be dissolved; and it is hereby made the duty of the attorney-general to make complaint in the district court in any county in

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which such company or corporation may be doing business, against any company or corporation who shall in any manner violate any of the provisions of this section, or commit any of the acts herein recited; and upon the trial in said court, or any court to which the same may be transferred, if it shall be established, by the finding of the court, or the verdict of the jury, that any of the acts herein recited have been committed by such corporation or company, the said court shall render judgment of forfeiture and the dissolution of such corporation, and may appoint receivers as in other cases provided for in this act. Upon the trial of any action commenced against any railroad company or corporation for charging, demanding or receiving unreasonable rates for the transportation of freights or passengers, under the provisions of this section, the court or jury before whom the same is tried shall find specially whether such company or corporation has charged, demanded or received unreasonable rates for such transportation. (G. S. 1878, ch. 76, § 11; Kelley's Stats., § 5561.)

### **Supplemental complaint by creditor.**

§ 5904. If any creditor of a corporation desires to make such directors or stockholders parties to the action, after a judgment therein against the corporation, he may do so, on filing a supplemental complaint against them, founded upon such judgment; and if such decree was rendered in a proceeding instituted by the attorney-general, such creditor may, on his application, be made complainant therein, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such action. (G. S. 1878, ch. 76, § 16; Kelley's Stats., § 5571.)

### **Action by creditor against stockholder, etc.**

§ 5905. Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose, in any district court which possesses jurisdiction to enforce such liability. (G. S. 1878, ch. 76, § 17; Kelley's Stats., § 5563.)

[Right of a creditor under G. S. 1878, ch. 76 (G. S. 1894, ch. 76), to require stockholders to be made parties and have their liabilities ascertained and enforced for the benefit of all creditors, though the creditor who instituted the original action did not ask for such relief. Bank v. Real Estate Co., 63 N. W. Rep. 1068.]

In a proceeding against an insolvent corporation under this chapter to wind up its affairs and distribute its assets among creditors, a creditor may be allowed by the court, in its discretion, to come in and become a party after expiration of the time previously limited for such purpose. Spooner v. Bay St. Louis Syndicate, 51 N. W. Rep. 377.

Judgment by default may be taken against a stockholder. Id.

In an action commenced under this chapter, to have a corporation adjudged insolvent, a creditor who has become a party, and proved his claim, may appeal from an order directing a sale of the property of the insolvent, and also from an order confirming such sale. But on an appeal from the latter only the regularity of the sale and the adequacy of the price obtained can be considered. Hospes v. Mfg. & Car Co., 41 Minn. 256; s. c., 43 N. W. Rep. 180.

In an action by creditors of an insolvent corporation, under above section, against the corporation and certain stockholders therein, from whom amounts are due on shares of stock, a finding that such persons were "stockholders" includes a finding that every condition precedent to their becoming full stockholders, and subject to liability, has been performed or waived. Arthur v. Clarke, 46 Minn. 491; s. c., 49 N. W. Rep. 252; Masonic Temple Assn. v. Channell, 43 Minn. 353; s. c., 45 N. W. Rep. 716, distinguished, id.

In an action under this section a complaint is not demurrable on the ground that it appears therefrom that there is a defect of parties defendant, in that all of the stockholders of the insolvent corporation had not been joined as such defendants. That it affirmatively appears from a complaint in such an action that the plaintiff is a stockholder in the corporation is no ground for holding that fact sufficient to constitute a cause of action has not been stated. Mendenhall v. Duluth Dry Goods Co., 75 N. W. Rep. 232.]

### **Account; appointment of receiver.**

§ 5906. The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers. (G. S. 1878, ch. 76, § 18; Kelley's Stats., § 5565.)

District court may appoint receiver, when. § 3432.

[A receiver of a corporation, appointed under this section, may avoid a prior chattel mortgage of the corporation on the ground that it was not filed as required by law. F. L. & T. Co. v. Engine & Mach. Works, 35 Minn. 543; s. c., 29 N. W. Rep. 349.]

### **Proceedings when corporation is proved insolvent.**

§ 5907. If, on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases. (G. S. 1878, ch. 76, § 19; Kelley's Stats., § 5566.)

[If a creditor of an insolvent corporation appears and take part in proceedings against it, he will, in a collateral proceeding, be bound by the judgment rendered in this proceeding. Nelson v. Jenkins, 51 Minn. 108; s. c., 52 N. W. Rep. 1081.]

The insolvency of a corporation at a particular time is not shown by proof that several weeks after that time it made a general assignment for the benefit of creditors. Redding v. Godwin, 44 Minn. 355; s. c., 46 N. W. Rep. 563.]

### **Distribution of assets.**

§ 5908. Upon a final judgment in any such action to restrain a corporation or against directors or stockholders, the court shall cause a just and fair distribution of the

## Suits against receivers; judgments against officers, etc.—Gen. Stats., §§ 5909–5911.

property of such corporation, and of the proceeds thereof, to be made among its creditors. (G. S. 1878, ch. 76, § 20; Kelley's Stats., § 5567.)

## § 5908a. Suits against receivers.

AN ACT providing for suits against receivers and assignees or managers of property under the control of the courts of this State.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That every receiver, assignee or manager of any property appointed by a court or managing the same under the direction of any court of this State, may be sued in respect to any act or transaction of his in carrying on the business connected with such property or corporation without the previous leave of the court by whom or in which such receiver, assignee or manager was appointed or under which he is acting.

§ 2. Any such suit may be brought in such county or jurisdiction as the same could have been brought against the person or corporation represented by such receiver, assignee or manager before such receiver, assignee or manager had been appointed or taken charge of such property, and such action shall be tried against such receiver, assignee or manager in the same manner and subject to the same rules of procedure as against the person or corporation for whom he acts under the court in case no receiver, assignee or manager had been appointed.

§ 3. Any judgment recovered as aforesaid against such receiver, assignee or manager in any court shall be paid by said receiver as a part of the expenses of managing said property.

§ 4. This act shall take effect and be in force from and after its passage.

(Approved April 11, 1893.)

## Collection of dues on subscriptions.

§ 5909. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him or so much thereof as is necessary to satisfy the debts of the company. (G. S. 1878, ch. 76, § 21; Kelley's Stats., § 5569.)

[A subscription contract was conditioned on a certain amount of stock being subscribed for. Several of the subscribers were corporations, whose articles of incorporation did not authorize them to subscribe for stock, but enough of these paid in full to make, with the other subscribers, the amount so called for. Defendants, when they subscribed, knew that these corporations had subscribed, and defendants afterwards paid a part of the amount of their subscription. Under these circumstances, it was held that the defendants waived the objection that the subscriptions of these corporations were ultra vires, even if that

objection could be made in the action. Seymour v. Jefferson, 71 Minn. 367; s. c., 74 N. W. Rep. 149.]

## Judgment against officers and stockholders.

§ 5910. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases. (G. S. 1878, ch. 76, § 22; Kelley's Stats., § 5570.)

[In a proceeding under above section, against an insolvent corporation and its stockholders, if part only of the subscribers are made parties, the court may charge those brought in with a just proportion only of the corporate debts. Clarke v. Opera House Co., 58 Minn. 16; s. c., 59 N. W. Rep. 632.

The remedy provided in above section is the method of enforcing the individual liability of a stockholder in a manufacturing corporation, and such action must be in the nature of a suit in equity, prosecuted by or in behalf of all creditors, against the corporation, and all the stockholders on whom such liability rests. Johnson v. Fischer, 30 Minn. 173; s. c., 14 N. W. Rep. 799.

If, in proceedings under this chapter, to collect assets of an insolvent corporation, and enforce individual liability of stockholders, all stockholders are not joined as parties, the defect is waived if objection is not taken by answer or demurrer; and, if any stockholders joined as parties are not served or brought into court, the defect is waived if the others go to trial on the merits without applying to have the cause stayed until their associates are brought in. Arthur v. Willius, 44 Minn. 409; s. c., 46 N. W. Rep. 851.

Where, in an action to enforce liability of corporate stockholders, judgment against them on stock issued as a bonus is reversed on appeal of one stockholder, it is proper for the trial court to reduce the liability of the other stockholders to an amount not exceeding the original shares issued to them. Rogers v. People's Gas & Electric Co., 78 N. W. Rep. 12.

If a stockholder's liability is not enforced in the original action under the provisions of this chapter, because the court had no jurisdiction of him or his property or for any other cause, an ancillary action may be maintained against him alone by the receiver in the original action to enforce his liability. The judgment in the original action, so far as it determines the amount of the corporate debts after exhausting the corporate assets, is conclusive on such stockholder unless impeached for fraud. Where, however, the property of such stockholder is found within the jurisdiction of the court, either before or after judgment in the original action, a separate action against the stockholder to reach the property is neither necessary nor proper, for it can be attached or sequestered in the original action. Hanson v. Davison, 76 N. W. Rep. 254.]

## Notice to creditors to exhibit claims.

§ 5911. Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment

## Enforcement of liability of stockholders — L. 1899, ch. 272, §§ 1-4.

which shall be rendered in such action, and from any distribution which shall be made under such judgment. (G. S. 1878, ch. 76, § 23; Kelley's Stats., § 5564.)

**Enforcement of Liability of Stockholders.****Procedure to enforce liability.**

§ 5911a. Whenever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them are liable to it or to its creditors, or for the benefit of its creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares at any time held or owned by such stockholders, respectively, whether under or by virtue of the constitution and laws of said State of Minnesota, or any statute of said State, or otherwise, has heretofore made or shall hereafter make an assignment for the benefit of its creditors and under the insolvency laws of this State; or whenever a receiver for any such corporation has heretofore been or shall hereafter be appointed by any district court of this State, whether under or pursuant to any of the provisions of chapter seventy-six (76) of the general statutes of eighteen hundred and ninety-four (1894) of Minnesota, and the acts amendatory thereof, or under or pursuant to any other statute of this State or under the general equity powers and practice of such court; the district court appointing such receiver or having jurisdiction of the matter of said assignment may proceed as in this act provided. (L. 1899, ch. 272; taking effect April 19, 1899.)

[The preceding section and sections 5911b-5911c, are from Laws 1899, chapter 272, entitled as follows:

**AN ACT to provide for the better enforcement of the liability of stockholders of corporations.**

**Hearing; notice.**

§ 5911b. Upon the petition of the assignee or receiver of any such corporation, or of any creditor of such corporation, who has filed his claim in such assignment or receivership proceedings, the said district court shall by order appoint a time for hearing, not less than thirty (30) nor more than sixty (60) days from the time of filing said petition with the clerk of said court, and shall direct such notice of such hearing to be given by the party presenting said petition, by publication or otherwise, as the court in its discretion may deem proper; but if said petition be filed by a creditor other than the assignee or receiver of said corporation, the court shall direct that notice of such hearing be personally served on such assignee or receiver. (L. 1899, ch. 272, § 2.)

**Proof of indebtedness and assets; assessment of stockholders.**

§ 5911c. At such hearing the court shall consider such proofs by affidavit or otherwise, as may then be offered by the assignee or receiver, or by any creditor or officer or stockholder of said corporation who may appear in person or by attorney, as to the probable indebtedness of said corporation and the expenses of said assignment or receivership, and the probable amount of assets available for the payment of such indebtedness and expenses; and also as to what parties are or may be liable as to stockholders of said corporation, and the nature and extent of such liability. And if it appear to the satisfaction of the court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness and the expenses of such assignment or receivership, and that it is necessary or proper that resort be had to such liability of its stockholders; the said court shall thereupon by order direct and levy a ratable assessment upon all parties liable as stockholders, or upon or on account of any stock or shares of said corporation, for such amount, proportion or percentage of the liability upon or on account of each share of said stock as the court in its discretion may deem proper (taking into account the probable solvency or insolvency of stockholder and the probable expenses of collecting the assessment); and shall direct the payment of the amount so assessed against each share of said stock to the assignee or receiver within such time thereafter as said court may specify in said order. (L. 1899, ch. 272, § 3.)

**Action to collect assessment.**

§ 5911d. Said order shall direct the assignee or receiver to proceed to collect the amount so assessed against each share of said stock from the parties liable therefor; and shall direct and authorize said assignee or receiver in case of the failure of any party liable upon or on account of any share or shares of said stock to so pay the amount so assessed against the same within the time specified in said order, to prosecute actions against each and every such party so failing to pay the same, wherever such party may be found, whether in this State or elsewhere. (L. 1899, ch. 272, § 4.)

**Assessment conclusive.**

§ 5911e. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of any stock or shares of said corporation, whether appearing or represented at said hearing, or having notice thereof or not, as to all matters relating to the amount of and

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the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said court as hereinafter provided. (L. 1899, ch. 272, § 5.)

**Receiver, when to bring action to recover assessment.**

§ 5911f. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon or on account of any share or shares of such stock, who has failed to pay the amount so assessed against the same, for the amount for which such party is so liable. Said actions may be maintained against each stockholder, severally, in this State, or in any other State or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder, may be found. But if said assignee or receiver shall in good faith believe any stockholder so liable to be insolvent, or that the expense of prosecuting such action against such stockholder will be so great that it will be of disadvantage to the estate and the interest of creditors to prosecute the same, said assignee or receiver shall so report to said court; and shall not be required to institute or prosecute any such action unless specifically directed so to do by said court. And in such case said court shall not require said receiver to institute or maintain such action unless said court shall have reasonable cause to believe that the result of such action will be of advantage to the estate and creditors of said corporation; except as hereinafter provided. (L. 1899, ch. 272, § 6.)

**Additional assessment, when made.**

§ 5911g. In any case where the court shall have levied an assessment against stockholders as in this act provided, for a less amount or proportion than the full amount of the liability upon or on account of the stock of said corporation, and it shall thereafter be made to appear to the satisfaction of said court, by petition or otherwise, and upon hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary or desirable or for the interest of creditors that another and further assessment upon or against said stock be levied; the court shall be ordered to direct and levy a further and additional assessment for such amount, proportion or percentage of the liability upon or on account of each share of said stock, as said court in its discretion may deem proper; and in the same manner may levy further and additional assessments upon said stockholders, and against said stock, not exceeding in the aggregate the maximum amount

of liability upon or on account of the stock of said corporation. (L. 1899, ch. 272, § 7.)

**Application of act to all assessments.**

§ 5911h. All the provisions of this act shall apply to any such assessment levied by said court after the first, and to the proceedings preliminary to levying and directing the same, to the same extent and with the same force and effect as to the first assessment so levied under the provisions of this act. (L. 1899, ch. 272, § 8.)

**Joinder of actions.**

§ 5911i. Where two (2) or more such assessments are levied or directed, the assignee or receiver may join the causes of action accruing against any stockholder upon any two or more such assessments in a single action against such stockholder, or he may, at his discretion, unless otherwise directed by the court, maintain a separate action against each stockholder for each successive assessment levied or directed. (L. 1899, ch. 272, § 9.)

**Proceedings to compel receiver to recover assessment.**

§ 5911j. If said assignee or receiver shall fail to institute and prosecute an action against any stockholder who has failed to pay any such assessment or assessments, or to prosecute such an action with diligence after instituting the same, any stockholder or stockholders who have paid in full the amount of any such assessments, or any creditor or creditors of said corporation, may petition said court to require said assignee or receiver to prosecute such action against such stockholders so failing to pay as aforesaid, or to permit the party or parties so petitioned to institute and maintain or to continue the prosecution of such action in the name of said assignee or receiver, and for the benefit of said estate, and if said party or parties so petitioning shall furnish security or indemnity for costs and expenses as the court may direct, the said court shall thereupon require said assignee or receiver to forthwith prosecute such action, or in its discretion may permit such party or parties so petitioning to institute and prosecute or continue the prosecution of the same as aforesaid. (L. 1899, ch. 272, § 10.)

**Distribution after payment of debts; constitution.**

§ 5911k. If, after the payment of all the expenses of such assignment or receivership and all indebtedness of and claims against said corporation proved or allowed in said proceedings, there shall remain any surplus money or property in the hands of the assignee or receiver, the same shall be distributed, under the direction of said court and in such manner as may be just and equitable, among those stockholders who have paid the assessments levied against

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their stock as herein provided. And any stockholder who has so paid such assessments levied against his stock shall, in addition to any remedy herein provided for, be entitled to enforce contribution from stockholders who have not paid such assessments, and for that purpose may be subrogated to the rights of the creditors of said corporation against such defaulting stockholders, in such manner and to such extent as may be just and equitable. (L. 1899, ch. 272, § 11.)

**Actions to collect assessments against stockholders who are not parties.**

§ 5911l. Whenever, in a proceeding heretofore instituted under the then existing laws of this State to enforce the liability of stockholders of any such corporation, a portion of the amount for which the stockholders of such corporation are liable has been collected, but the amount so collected is insufficient to pay and discharge claims against said corporation in full, and there remain stockholders who were not made parties to such proceedings, then, notwithstanding final judgment may have been rendered and entered in said proceeding against those stockholders who were made parties thereto, the district court having jurisdiction may proceed as in this act provided, and may levy assessments in the manner herein prescribed to such extent as may be necessary to satisfy and discharge in full all claims against said corporation and all expenses of such proceedings. And the assignee or receiver, or the receiver appointed by said court in such proceedings, may institute and maintain actions to recover the amount of such assessments in the same manner, with the same effect, as in the case of an assessment levied as provided in the preceding sections of this act, and all the provisions of this act, shall apply to any stockholder who has paid, or from whom has been collected, in the course of such prior proceeding, any portion of the amount for which he is liable for or on account of the stock held or owned by him, shall be credited upon any assessment levied against said stock, as in this section provided, with the full amount so paid by or collected from him. (L. 1899, ch. 272, § 12.)

**Application of act.**

§ 5911m. This act shall not apply to any action now pending to which stockholders of such corporations have been made parties, under the provisions of chapter seventy-six (76), general statutes of eighteen hundred and ninety-four (1894), and acts amendatory thereto, and in which the issue as to who are stockholders has heretofore been tried and determined by the courts; except that after final judgment in such action, if a proper case exists under the provisions of section twelve (12) of this act, the court and parties may proceed in the manner pre-

scribed by said section twelve (12). (L. 1899, ch. 272, § 13.)

**§ 5911n. Enforcement of liability of stockholders, directors, trustees, etc., by assignees or receivers.**

§ 5911n. (§ 1.) Whenever any corporation whose stockholders, or directors, trustees or other superintending officers shall be liable to its creditors, on account of any liability created by law, shall have become insolvent, and shall have made an assignment of its property for the benefit of its creditors, or a receiver shall have been appointed for such corporation, it shall be the duty of such receiver or assignee, if no action by any creditor of such insolvent corporation shall be commenced against such stockholders, directors, trustees and officers of such corporation under the provisions of chapter seventy-six (76) of the general statutes of the State of Minnesota, for the year eighteen hundred and seventy-eight (1878), within six months from the date of such assignment or appointment of such receiver, to forthwith commence an action against such stockholders, directors, trustees and officers of such corporation in his own name as such assignee or receiver, to enforce all such liability; and such action shall conform as nearly as practicable to the provisions of said chapter seventy-six (76) and he shall bring such action to the speediest possible termination, without awaiting the winding up or final disposal of the insolvent estate. The amount collected through such proceeding shall be, as soon as possible, paid to the creditors of such corporation; and if there shall be any surplus property or money after the payment of all claims against said insolvent estate duly allowed, and the necessary costs and expenses of such assignee or receiver, then the same shall, after due notice to all interested parties given by such receiver or assignee in a manner to be prescribed by the court for a final hearing and accounting of such assignee or receiver, be turned over to such corporation. And the court may, in its discretion in said proceeding, upon application of any interested party or upon its own motion after due notice to all interested parties, make a partition and distribution of such surplus property and money to the persons who may be entitled thereto, and said court shall make and enter its judgment of partition and distribution in such proceeding.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

This section is derived from L. 1897, ch. 341, entitled "An act to provide for the enforcement by assignees and receivers of the liability of all stockholders, directors, trustees and other superintending officers of corporations for the benefit of creditors thereof." Approved April 23, 1897.

Actions to vacate charters, etc.—Gen. Stats., §§ 5961–5963, 5965, 5968–5970.

### CHAPTER 79.

#### Actions to Vacate Charters, etc.

Sec. 5961. Action to annul incorporation act.

5962. Action to vacate charter.

5963. Action against persons usurping offices or franchises.

5965. Complainant to be joined with State as plaintiff.

5968. All claimants may be joined.

5969. Judgment against usurpers.

5970. Corporation when adjudged dissolved.

5971. Costs against corporations.

5972. Judgment against corporation.

5973. Judgment-roll to be filed.

#### Action to annul incorporation act.

§ 5961. An action may be brought by the attorney-general, in the name of the State, whenever the legislature so directs, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated, or some of them, or with their knowledge and consent. (G. S. 1878, ch. 79, § 1; Kelley's Stats., § 5931.)

[It is an implied condition in the charter of every private corporation, that the State may resume its franchises for misuser or non-user. State v. Ry. Co., 36 Minn. 246; s. c., 30 N. W. Rep. 816.]

#### Action to vacate charter.

§ 5962. An action may be brought by the attorney-general, in the name of the State, for the purpose of vacating the charter, or annulling the existence, of a corporation, other than municipal, whenever such corporation:

First. Offends against any of the provisions of the act or acts creating, altering or renewing such corporation; or,

Second. Violates the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third. Whenever it has forfeited its privileges or franchises, by failure to exercise its powers; or,

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law.

And the attorney-general shall bring the action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved; and also in every other case in which satisfactory security is given to indemnify the State against the costs and expenses to be incurred thereby. (G. S. 1878, ch. 79, § 2; Kelley's Stats., § 5332.)

[To warrant a forfeiture of corporate franchises for misuser, the misuser must be such as to threaten a substantial injury to the public. State v. Mfg. Co., 40 Minn. 213; s. c., 41 N. W. Rep. 1020.]

Quo warranto is a proper proceeding to try the right of a foreign corporation to carry on its corporate business in this State. State v. Ins. Co., 38 Minn. 533; s. c., 41 N. W. Rep. 108.

Proceedings by information in the nature of quo warranto will lie directly against a de facto or pretended corporation for usurpation of corporate franchises, or to oust from the enjoyment of the privileges thereof. State v. Tracy, 51 N. W. Rep. 613.]

#### Action against persons usurping offices or franchises.

§ 5963. An action may be brought by the attorney-general, in the name of the State, upon his own information, or upon the complaint of a private party, against the party offending in the following cases:

First. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, or any franchise, within this State, or any office in a corporation created by the authority of this State; or,

\* \* \* \* \*

Third. When any association or number of persons act within this State as a corporation, without being duly incorporated. And the attorney-general shall bring the action whenever he has reason to believe that any of these acts can be proved. (G. S. 1879, ch. 78, § 3; Kelley's Stats., § 5333.)

#### Complainant to be joined with State as plaintiff.

§ 5965. When an action is brought by the attorney-general, by virtue of this chapter, on the complaint or information of any person having an interest in the question, the name of such person shall be joined with the State as plaintiff. (G. S. 1878, ch. 79, § 5; Kelley's Stats., § 5336.)

#### All claimants may be joined.

§ 5968. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise. (G. S. 1878, ch. 79, § 8; Kelley's Stats., § 5335.)

#### Judgment against usurpers.

§ 5969. When a person or a corporation is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such person or corporation be excluded from the office, franchise or privilege. The court may also, in its discretion, impose upon the defendant a fine not exceeding one thousand dollars. (G. S. 1878, ch. 79, § 9; Kelley's Stats., § 5339.)

[A judgment restraining a corporation from exercising corporate privileges, and for dissolution, held sustained by the findings. State v. Mfg. Assn., 69 N. W. Rep. 621.]

#### Corporation, when adjudged dissolved.

§ 5970. If it is adjudged that a corporation has, by neglect, abuse or surrender, forfeited its corporate rights, privileges and fran-

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Actions to vacate charters; crimes by officers — G. S. §§ 5971–5973, 6699, 6700, 6761, 6762.

chises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved. (G. S. 1878, ch. 79, § 10; Kelley's Stats., § 5340.)

Voluntary dissolution. § 3430.

[A corporation is not dissolved by misuser or non-user of its franchises until its default is judicially ascertained and declared. Ry. Co. v. Melvin, 21 Minn. 339.]

### Costs against corporation.

§ 5971. If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by process against the directors or other officers of such corporation. (G. S. 1878, ch. 79, § 11; Kelley's Stats., § 5342.)

### Judgment against corporation.

§ 5972. When such judgment is rendered against a corporation, the court has power to restrain the corporation to appoint a receiver of its property, and take an account, and make distribution thereof among the creditors; and the attorney-general, immediately after the rendition of such judgment, shall institute proceedings for that purpose. (G. S. 1878, ch. 79, § 12; Kelley's Stats., § 5341.)

See § 3432, and cross-references.

### Judgment-roll to be filed.

§ 5973. Upon the rendition of such judgment against a corporation, \* \* \* the attorney-general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State. (G. S. 1878, ch. 79, § 13; Kelley's Stats., § 5343.)

### The Penal Code.

Sec. 6699. Officer of corporation selling forged scrip or stock.

6700. Fraudulently indicating person as corporate officer.

6761. Fraud in subscriptions for stock of corporations.

6762. Fraudulent issue of stock, scrip, etc.

6764. Fraud in keeping accounts, etc.

6765. Officer of corporation publishing false reports of its condition.

6766. Director defined.

### Officers of corporation selling forged shares.

§ 6699. An officer, agent, or other person, employed by any company or corporation existing under the laws of this State, or of any other State or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false,

forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and, upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars. (Penal Code, § 405; Kelley's Stats., § 6379.)

See § 2836, and cross-references.

### Falsely indicating person as corporate officer.

§ 6700. The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, State or government, and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, State or government. (Penal Code, § 406; Kelley's Stats., § 6380.)

See § 2836, and cross-references.

### Frauds in stock subscriptions.

§ 6761. A person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed, and a person who signs to any subscription or agreement, the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement, are not to be complied with, or enforced, is guilty of a misdemeanor. (Penal Code, § 465; Kelley's Stats., § 6445.)

### Fraudulent issue of stock, scrip, etc.

§ 6762. An officer, agent, or other person in the service of any joint-stock company or corporation formed or existing under the laws of this State, or of the United States, or of any State, or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud; either

1. Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge, or issue, or to cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate, or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or

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writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit proposed by law, or otherwise, upon its power to create or issue stock or evidence of debt; or

2. Reissues, sells, pledges, or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares,

Is punishable by imprisonment in the State prison for not less than three years nor more than seven years, or by a fine not exceeding three thousand dollars, or by both. (Penal Code, § 466; Kelley's Stats., § 6446.)

**Liability of stockholder who is guilty of fraud.**  
§ 2600; see § 2836.

#### Frauds in keeping accounts.

§ 6764. A director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association; and a director, officer, agent, or member of any corporation or joint-stock association, who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State prison not exceeding ten years or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. (Penal Code, § 468, as amended by L. 1889, ch. 208, § 3; Kelley's Stats., § 6448.)

See § 2800, and cross-references.

#### Publishing false reports, etc.

§ 6765. A director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are elsewhere, by this code, specially made punishable, is guilty of a misdemeanor. (Penal Code, § 469; Kelley's Stats., § 6449.)

#### "Director" defined.

§ 6766. The term "director," as used in this chapter, embraces any of the persons

having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or are known in law. (Penal Code, § 470; Kelley's Stats., § 6450.)

**Election of directors.** § 2811.

#### Pools and Trusts.

#### Prohibition of pools and trusts.

§ 6955. If any corporation organized under the laws of this State or any other State or country for transacting or conducting any kind of business in this State, or any partnership or individual shall create, enter into, become a member of or a party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil, lumber, coal, grain, flour, provisions or any other commodity or article whatever, or shall create, enter into, become a member or a party to any pool, agreement, combination or confederation to fix or limit the amount or quantity of any commodity or articles to be manufactured, mined, produced or sold in this State, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment, as provided in the next section. (1891, ch. 10, § 1.)

#### Penalty for violation.

§ 6956. Any person or corporation found guilty of a violation of this act shall be punished by a fine of not less than one hundred (100) dollars, nor to exceed five thousand (5,000) dollars, and be imprisoned in the State prison for not less than one year nor more than ten years: Provided, however, that this act shall not affect nor shall the same apply to any offense committed before the passage hereof; but any person having violated the provisions of said section previous to the passage of this act shall be prosecuted and punished in the manner and according to the provisions of the statutes in force at the time of the commission of such offense. (1891, ch. 10, § 2, as amended by L. 1893, ch. 125, § 1.)

#### Who are competent witnesses.

§ 6957. Upon the trial of an indictment against a corporation or a copartnership for a violation of the first section of this act, all officers and agents of such corporation or copartnership shall be competent witnesses against the defendant on trial, and such officers and agents may be compelled to testify against such defendant and produce all books and papers, in his custody or under his control, pertinent to the issue in such trial, and shall not be excused from answering any such question or from producing any books and papers because the same might tend to criminate such witness; but nothing which such witness shall testify to and no books or papers produced by him shall in

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Trusts and combinations — L. 1899, ch. 359, §§ 1-6.

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any manner be used against him in any suit, civil or criminal, to which he is a party. (1891, ch. 10, § 3.)

**§ 6957a. Trusts and combinations illegal; contracts void; forfeiture of charter.**

[L. 1899, ch. 359, An Act to prevent the organization of trusts, and to provide in certain cases for the forfeiture of the charter of corporations organized under the laws of this State, and to prevent corporations, trusts or combinations under certain circumstances from doing business or enforcing contracts in respect thereto, under the laws of this State.]

Section 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust or otherwise, hereafter entered into which is in restraint of trade or commerce within this State, or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise, the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility, is hereby prohibited and declared to be unlawful. That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers by sale or otherwise, in whole or in part, its franchise, rights and privileges, or the control or management of its business, to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control, or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State, or of the several States, such union, combination, agreement, arrangement, or contract, is

hereby prohibited and declared to be unlawful.

§ 2. Every person who shall either directly or indirectly make any such contract, agreement, or arrangement, or enter into any such combination, conspiracy, or trust, as defined in section one (1) of this act, shall be guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or by imprisonment in the State's prison for not less than three (3) years, nor more than five (5) years.

§ 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State, which shall hereafter, either directly or indirectly, make any contract, agreement, or arrangement, or enter into any combination, conspiracy or trust, as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this State. Any corporation organized under the laws of any other State, territory or country, which is now located, or which may hereafter be located within this State, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust, as defined in section one (1) of this act, shall in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this State, except as to the final disposition of its property, under the laws of this State.

§ 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this State, in favor of such persons, partnership, association or corporation.

§ 5. Any person who shall enter into any correspondence, negotiations or agreement in this State, or who shall, being a resident of this State, go into another State, territory or country for the purpose of entering into any negotiations or agreement which tend to the formation of any contract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

§ 6. That for the purpose of carrying out the provisions of this act, any citizen of this State may, and it is hereby declared to be the duty of the attorney-general to institute in the name of the State, proceedings in any court of competent jurisdiction, against any

Labor provisions; employment of children — Gen. Stats., §§ 6962–6964; L. 1895, ch. 171.

person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. Provided, that when such proceedings are instituted by any one other than the attorney-general, the State shall not be in any manner liable for the costs or for any of the expense of such proceedings. And, provided further, that when the attorney-general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

§ 7. The word person, as used in this act, shall be construed to include any corporation or association formed or existing under any law of this State, or any other State or country.

§ 8. This act shall take effect and be in force from and after its passage.

(Approved April 21, 1899.)

#### **Labor Provisions.**

Sec. 6962. Employers not to require abandonment of rights of citizenship.

6963. Who to be deemed "persons."

6964. County attorney to prosecute violations.

6964a. Employment of children.

6964b. Blacklisting; coercing employees.

6964c. Penalty for coercing employees.

**Employers not to require abandonment of rights of citizenship.**

§ 6962. Any person or partnership carrying on any trade or business in this State, and any corporation created under general or special laws, foreign or domestic, and exercising public or private franchises therein, are hereby forbidden from requiring or demanding of or from any servant or employee, on any condition whatever, the surrender in writing or by parol, or the abandonment or any agreement to abandon any lawful right or privilege of citizenship, public or private, political or social, moral or religious, and whoever violates the provisions of this act shall be deemed guilty of a misdemeanor and upon a conviction shall be fined in a sum not exceeding one hundred dollars and shall stand committed to the common jail of the proper county until such fine and costs of prosecution are paid, or in lieu of such fine the proper court may, in its discretion, sentence the convicted party to imprisonment in the county jail of the proper county for a term not exceeding ninety days. (L. 1893, ch. 25, § 1)

#### **Who to be deemed "persons."**

§ 6963. The president, vice-president, secretary, general superintendent, or other principal officer of any such partnership, association or corporation as is named in section one of this act, who may direct or be a party to the violation of the provisions hereof, shall be taken and deemed as persons within

the meaning thereof and shall be held liable in all courts and places for a violation by such partnership or corporation of the provisions thereof. (Id., § 2.)

#### **County attorney to prosecute violations.**

§ 6964. The county attorney of any county, or the proper prosecuting officer of any city or municipality in this State, is hereby authorized and directed to commence and to prosecute to termination before the proper court all violations of the provisions of this act, whenever the same are brought to his notice. (Id., § 3.)

#### **§ 6964a. Employment of children.**

[L. 1895, ch. 171, An Act to regulate the employment of children.]

Section 1. (As amended April 23, 1897.) No child under fourteen (14) years of age shall be employed at any time in any factory or workshop, or about any mine. No such child shall be employed in any mercantile establishment nor in the service of any telegraph, telephone or public messenger company except during the vacation of the public schools in the town where such child is employed. No child under sixteen (16) years of age shall be employed at any occupation dangerous or injurious to life, limb, health or morals; nor at any labor of any kind outside of the family of such child's residence before six o'clock in the morning, nor after seven o'clock in the evening, nor more than ten (10) hours in any one day, nor more than sixty (60) hours in any one week, except in accordance with the following express permission or condition, to wit: Children not less than fourteen years of age may be employed in mercantile establishments on Saturdays and for ten days each year before Christmas until ten (10) o'clock in the evening; Provided, however, That this permission shall not be so construed as to permit such children to toil more than ten hours in any one day, nor over sixty hours in any one week.

§ 2. No child under the age below which all children are by law required to attend shall in the year next succeeding any birthday of said child be employed in any occupation during the hours in which the public schools in the town or city in which he resides are in session, unless or until the said year he has attended some school for at least a period of time equal to that required by law for attendance of school.

§ 3. The commissioner of labor, the factory inspector or any assistant factory inspector shall have power to demand a certificate of physical fitness from some regularly licensed physician in the case of children who may seem physically unable to perform the labor at which they may be employed, and no minor shall be employed who cannot obtain such a certificate.

§ 4. No child under sixteen years of age who cannot read and write simple sentences

Employment of children; blacklisting — L. 1895, ch. 171, §§ 5-9; L. 1895, ch. 174, §§ 1-3.

in the English language shall, except in vacations of the public schools be employed at any indoor occupation, provided such child is not a regular attendant at a day or evening school.

§ 5. (As amended April 23, 1897.) Whenever it appears upon due examination that the labor of any minor who would be debarred from employment under the provisions of sections two and four of this act is necessary for the support of the family to which said minor belongs, or for his own support, the school board or board of school trustees of the city, village or town in which said child resides may, in the exercise of their discretion, issue a permit or excuse authorizing the employment of such minor within the time or times as they may fix.

§ 6. No person, firm or corporation shall employ or permit any child under sixteen (16) years of age to have the care, custody, management or operation of any elevator, or permit any person under eighteen (18) years of age to have the care, custody, management or operation of any elevator running at a speed of over two (200) hundred feet a minute.

§ 7. No child actually or apparently under sixteen (16) years of age shall be employed in any factory, workshop or mercantile establishment, or in the service of any public telegraph, telephone or district messenger company or other corporation, unless the person, firm or corporation employing said child procures and keeps on file the certificate required in the case of such child by the following section, and also keep on file a full and complete list of such children employed therein.

§ 8. The employment certificates of children under sixteen (16) years of age called for by this act, shall, in cities and towns having a superintendent of schools, be signed by said superintendent or some person authorized by him in writing so to sign the same; in other cities and towns it shall be signed by some member of the school board authorized by votes of said board to sign such certificates. Said certificate shall contain a statement of the name, birthplace, date of birth, and age of child at date of statement. This statement shall be signed and acknowledged under oath or affirmation before the person authorized to issue the certificate. The certificate shall also contain a statement or certificate by the officer issuing the same that the child can read at sight and write legibly simple sentences in the English language, or that said child if unable so to read and write is regularly attending a day or evening school or has been excused by the school board from said attendance as provided by section five (5), and that if under the age required by law for the attendance of all children at school, said child has in the year next preceding the issuing of said certificate attended school as required by law. If attendance has been

at a private school there must also be added the signature of the teacher in charge of the same followed by words certifying to school attendance. The person signing the certificate shall have authority to administer the oath provided therein but no fee shall be charged therefor. The commissioner of labor is hereby authorized and directed to prepare blank certificates such as are called for by this section and furnish the same to the superintendents of schools and school boards of the State.

§ 9. The statement in the certificate giving the birthplace and age of the child shall be signed by the father, if living, and resident of the same city or town; if not, by his mother; or if his mother is not living, or if living is not a resident of the same city or town, by his guardian; if a child has no father or mother or guardian living in the same city or town his own signature to the certificate may be accepted by the person authorized to approve the same.

§ 6964b. **Blacklisting; coercing employes.**

[L. 1895, ch. 174, An Act to prohibit the practice of blacklisting and the coercing and influencing of employes by their employers.]

Be it enacted by the legislature of the State of Minnesota:

Section 1. It shall be unlawful for any two (2) or more employers or any two (2) or more corporations to combine or agree to combine or confer together for the purpose of interfering with, or preventing any person or persons from procuring employment, either by threats, promises, or by circulating or causing to be circulated, blacklists, or for the purpose of procuring and causing the discharge of any employe or employee by any means whatsoever.

§ 2. No company, corporation or partnership in this State shall authorize, permit or allow any of its or their agents to nor shall any of its or their agents blacklist any discharged employe or employes, or by word or writing seek to prevent, hinder or restrain such discharged employe or any employe who may have voluntarily left such company's or person's service from obtaining employment from any other person or company.

§ 3. No person or persons, employer or employers of labor, and no agent or agents, or officer or officers, employe or employes of any corporation or corporations on behalf of such corporation or corporations shall require, coerce or compel, demand or influence, any person or persons, employe or employes, laborer, or mechanic to enter into an agreement, either written or verbal, from such person or persons, employe, laborer or mechanic not to join or become or remain a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment

Coercing employees; criminal offenses by corporations — L. 1895, ch. 712; L. 1895, ch. 217.

of any such person or persons, employer or employers, corporation or corporations.

§ 4. Any person or persons, employer or employers of labor, and any agents, representatives or employees of any person or persons, employer or employers, who shall be guilty of any violation of the provisions of any preceding section of this act, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine not exceeding one hundred (100) dollars or imprisonment in the county jail for a period of not more than ninety (90) days.

§ 5. It shall be the duty of the county attorney of any county in which a civil action in the name of the State of Minnesota shall be brought in accordance with the provisions of this act, to begin and prosecute all such suits to a termination whenever information is given him by any person that any employer or employers or corporation; or his or its officers, agents or employers have violated any of the provisions of this act.

§ 6. It shall be the duty of the commissioner of labor to see that all the conditions of this act are enforced.

§ 7. This act shall take effect and be in force from and after its passage.

(Approved April 25, 1895.)

See § 2667, subd. 5, and cross-references.

#### § 6964c. Penalty for coercing employees.

[L. 1895, ch. 712, An Act to provide a penalty for coercing or influencing or making demands upon or requirements of employees, servants, laborers and persons seeking employment.]

Be it enacted by the legislature of the State of Minnesota:

Section 1. That it shall be unlawful for any individual, or member of any firm, or any agent, officer or employee of any company or corporation to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any lawful labor organization or association as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation.

§ 2. Any person who, acting for himself either directly or through another person, agent or agency, or who acting as agent or employee of another person or persons, who as a member of any firm, or as an officer, agent or employee of any company or corporation, coerces, requires, demands or influences any person or persons to enter into any agreement, either written or oral, not to join or become or remain a member of any lawful labor organization or association as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation, is guilty of a misdemeanor.

§ 3. This act shall take effect and be in force from and after its passage.  
(Approved April 26, 1895.)

#### Criminal Offenses Committed by Corporations.

[L. 1895, ch. 217, An Act relative to criminal offenses committed by corporations.]

Be it enacted by the legislature of the State of Minnesota:

Section 1. When an indictment against a corporation is filed in any district court, charging such corporation with the commission of a crime, a summons shall be issued by the clerk of the court in which the indictment is found, signed by one of the judges of said court, commanding the sheriff to forthwith notify the accused thereof, and commanding the accused to be and appear before said court within twenty-four hours after the service of such summons upon it. Such summons together with a copy of the indictment shall be at once delivered by said clerk to said sheriff and by said sheriff at once served and returned in the manner provided for the service of the summons upon said corporation in a civil action. When a complaint against a corporation charging it with the commission of crime is made before any justice of the peace or in any municipal court a like summons shall be issued signed by such justice of the peace, or by the judge of such municipal court, as the case may be, which said summons together with a copy of said complaint, shall be delivered at once to the sheriff who shall at once serve the same in the manner hereinbefore provided. A corporation upon such service being made shall appear within the time limited by said summons by one of its officers or by counsel; and upon such appearance and thereafter the same course shall be pursued as nearly as may be, as upon the appearance of an individual to an indictment, or complaint and warrant, charging him with the same offense. Upon the failure of such corporation to make such appearance the said clerk, justice of the peace or municipal judge, shall enter or cause to be entered a plea of "not guilty," and upon such appearance being made or plea entered the corporation shall be deemed thenceforth continuously present in court until the case is finally disposed of. If the corporation is found guilty and a fine imposed, it shall be entered and docketed by the clerk, justice of the peace or judge of the municipal court as the case may be, as a judgment against the corporation, and it shall be in force and of the same effect and shall be enforced against such corporation in the same manner as if the judgment had been recovered against it in a civil action.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved April 8, 1895.)

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Officers may take acknowledgments — L. 1899, ch. 62.

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**Oaths and Acknowledgments.**

[L. 1899, ch. 62, An Act authorizing officers, directors and stockholders of corporations to administer oaths and take acknowledgments of instruments wherein such corporation is interested.]

Be it enacted by the legislature of the State of Minnesota:

Section 1. Any person authorized to take acknowledgments or administer oaths, who

is at the same time an officer, director, or stockholder of a corporation, is hereby authorized to take acknowledgments of instruments wherein such corporation is interested, and to administer oaths to any other officer, director or stockholder of such corporation as such, as fully and effectually as if he were not an officer, director or stockholder of such corporation.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved March 18, 1899.)



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MISSISSIPPI.

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# MISSISSIPPI.

(Legislature did not meet in 1899.)

## DECISIONS.

(Include 26 S. Rep. 696.)

### Officers; compensation of secretary of promoters.

Evidence held sufficient to show that a railroad superintendent had authority to make a contract for life employment. *Jackson v. Illinois Central R. Co.* (Sup. Ct. Miss.), 24 S. Rep. 874 (1898).

A corporation cannot be held liable for the services of a director, as secretary for its promoters, with the expectation that the corporation would pay him. *West Point Telephone & Telegraph Co. v. Rose* (Sup. Ct. Miss.), 23 S. Rep. 629 (1898).

A corporation is not liable for the salary of a secretary of the directors, where there was an express understanding that no salary should be paid to the officer. *Id.*

### Effect of consolidation.

A new corporation formed by the consolidation of two corporations, whose existence is thereby extinguished, comes into existence precisely as if it had been organized under a charter granted at the date of consolidation. *Adams v. Yazoo & M. V. R. Co.* (Sup. Ct. Miss.), 24 S. Rep. 200 (1898).

The power to consolidate in the "grant of a corporate franchise," within Const. 1890, § 180, providing that "grants of corporate franchises, under which organizations have not in good faith taken place at the adoption

of this Constitution, shall be subject" to certain constitutional provisions, one of which provides against exemption from taxation. *Adams v. Yazoo & M. V. R. Co.* (Sup. Ct. Miss.), 24 S. Rep. 200 (1898).

### Annulment of charter.

Corporations organized to aid municipalities in discharging public duties exist by grace of the legislature only, and when their functions cease, they become extinct, if the legislature so declares, whether they have been guilty of wrong, or neglect, or not. *State ex rel. City of Vicksburg v. Washington Steam Fire Co. No. 3* (Sup. Ct. Miss.), 24 S. Rep. 877 (1898).

### Misnomer in pleading.

Misnomer of a corporation defendant can be argued only by plea in abatement. *Gillespie v. Planters' Oil Mill & Mfg. Co.* (Sup. Ct. Miss.), 24 S. Rep. 900 (1898).

### Foreign corporations.

A railroad corporation, chartered in Illinois, and authorized by the legislature to lease and operate a railroad in Mississippi, is a non-resident corporation dwelling in Illinois. *Illinois Cent. R. R. Co. v. Sanford*, (Sup. Ct. Miss.), 23 S. Rep. 355, 942 (1898).







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MISSOURI.

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# MISSOURI.

## LAWS OF 1899.

### Usury.

AN ACT to prevent the taking of more than two (2) per cent. per month interest on the forbearance or use of money or other commodity, making the violation thereof a misdemeanor, and prescribing the penalty therefor.

Section 1. Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money or other commodities, any interest at a greater rate than two per cent. per month, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law. (Approved April 14, 1899.)

### Sale or Assignment of Usurious Contract.

AN ACT to prohibit the sale, transfer or assignment of usurious note, contract, etc., without giving purchaser or assignee notice of usurious character, making a violation thereof a misdemeanor, and fixing the penalty therefor.

Section 1. Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall sell, assign, transfer or in any manner dispose of any bond, bill of exchange, note or contract whatsoever, knowing the same to be usurious, without first giving the purchaser or assignee thereof notice of its usurious character, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. (Approved March 27, 1899.)

### Taking or Sending Notes, Bonds, etc., Out of this State.

AN ACT to prevent persons from taking or sending notes, bonds and choses in action out of this State for suit in a foreign jurisdiction against resident debtor and for having process in such suit levied on resident debtor subject to process in this State, making a violation thereof a misdemeanor, and prescribing the penalty therefor.

Section 1. Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall take or send, or cause to be taken or sent, out of this State any note, bond, account or chose in action, for the purpose of instituting or causing to be instituted any suit thereon in a foreign jurisdiction against a resident of this State, for the purpose of having execution, attachment, garnishment, or other process issued in such suit, or upon a judgment rendered in any such suit, against the wages of a resident of this State, and having such process served upon any person who is, or firm, company or corporation which is subject to the processes of the courts of this State, who is indebted or may become indebted to a resident of this State, for wages, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. (Approved April 14, 1899.)

### Foreign Corporations; Admission Tax.

AN ACT to regulate the transaction of business in this State by corporations not organized and incorporated under the laws of this State.

Section 1. No corporation organized or incorporated under the laws of any other State shall do business in this State if such company if organized in this State would organize under article 8 of chapter 42 of the Revised Statutes, or acts amendatory thereof, without first procuring a license therefor, which license shall be granted by the secretary of State.

See Anno. Corp. L., Mo., p. 53, act of 1891 (art. 6), relating to foreign corporations.

## MISSOURI.

## Officers; quorum; dissolution.

§ 2. In order to procure such license it shall be necessary for the corporation applying therefor to file with the secretary of State a copy of its articles of association and charter granted by the State or Territory under which it is organized, and if it shall appear that such company or corporation could not organize under the laws of this State, license shall be refused; provided, that this act shall not be construed so as to permit any corporation violating the anti-trust laws of this State to have license to transact business.

§ 3. There shall be paid to the State treasury a fee of ten dollars by each company procuring a license for the issuance thereof.

§ 4. It shall be the duty of the attorney-general to enforce the provisions of this act.  
(Approved May 23, 1899.)

## Officers; Quorum of Board; Meetings.

AN ACT to amend sections 2491 and 2510, of chapter 42, article 1, of Revised Statutes of the State of Missouri, 1889, entitled "Corporations — private."

§ 2491. The directors shall appoint one of their number president; they may also appoint a treasurer and secretary, and such other officers and agents as shall be prescribed by the by-laws of the company: Provided, that the president, treasurer and secretary, or such other officer or officers as perform their duties, of all corporations other than railroad companies, shall have and keep their offices at the general office of the company in this State.

See Anno. Corp. L., Mo., p. 15, § 2491.

§ 2510. When the corporate powers of any corporation are directed by its charter, or the provisions of this law, to be exercised by any particular body or number of persons, a majority of such body or persons, if it be not otherwise provided in the charter or law creating it, shall be a sufficient number to form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act; provided, that not less than three members of such board shall be citizens and residents of the State, and all meetings thereof shall be held at the general office of the company within the State.  
(Approved May 11, 1899.)

See Anno. Corp. L., Mo., p. 26, § 2510.

## Voluntary Dissolution.

AN ACT providing for the voluntary dissolution of private corporations.

Section 1. Whenever the directors or other officers having the management of the concerns of any private corporation organized under the laws of this State, or a majority of the stockholders of such corporation shall discover that the stock, property and effects

of such corporation have been so far reduced by losses or otherwise that it will not be able to pay all just demands against the same or to afford security to those who may deal with such corporation; or whenever the stockholders holding at least two-thirds in value of all the shares of stock in said corporation shall adopt a resolution favoring a dissolution of such corporation, whether said corporation be indebted or not, or whether its stock has depreciated below its par value or not, such corporation may be dissolved by a judgment or decree of the circuit court of the county in which its principal office for the transaction of its business is located, and if such office is situated in the city of St. Louis, such judgment of dissolution may be rendered by either of the circuit courts of the eighth judicial circuit.

§ 2. Application for such dissolution shall be made by a petition, verified by the president and secretary or by a majority of the directors, setting forth a clear and concise statement of the reasons which induce the stockholders to desire a dissolution of the corporation. Among other things, said petition shall contain a full and true inventory of all the estate, both real and personal, in law and equity, of such corporation, and of all the books, vouchers and securities relating thereto; also a full and true account of the capital stock of such corporation, specifying the names of the stockholders, their residence, if known, the number of shares belonging to each, the amount paid in upon such shares respectively and the amount, if any, due thereon; also all incumbrances on the property of such corporation by judgment, mortgage, pledge or otherwise, a list of all the creditors of said corporation and of all engagements entered into by said corporation, not fully satisfied or cancelled.

§ 3. Upon the filing of such petition an order shall be made by the court, if filed in term time, or by the clerk, if filed in vacation, requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved on or before a day or term of said court therein named. The several officers of said corporation and the various stockholders therein may enter their voluntary appearance in said court at the time of filing such petition and all stockholders and creditors of said corporation and all persons having unexecuted contracts with said corporation, who do not enter their voluntary appearance in said court, shall be notified by a summons under the hand and seal of the clerk of the court, reciting the filing of said petition, its general purpose and nature, and citing them to appear in said court on a day to be named in said writ to show cause, if any they have, against such dissolution, such day being fixed not less than twenty-one days nor more than thirty days after the filing of said petition. In

## Decisions.

addition to said summons notice of a general nature and cause of said application shall be published in some newspaper of general circulation in the county in which such proceeding is commenced, once a week for three weeks consecutively, and proof of service and publication shall be made before any order is made upon such petition. The court shall have power to continue such application for service upon all interested parties from time to time, to issue new writs if necessary, according to the practice therein.

§ 4. If upon a hearing of such application the court shall be satisfied that the prayer of such petition can be granted without prejudice to the public welfare, or the interest of the corporators or the creditors of such corporation it may enter a judgment or decree dissolving such corporation and direct that the president and directors or

managers of said corporation shall take charge of its assets and administer them as now provided by section 2513 of the Revised Statutes of Missouri for the year 1889: provided, that no property devoted to religious, literary or charitable uses shall be diverted from the objects for which they were granted by means of the powers herein given to any corporation to dissolve, but the same shall be preserved by the decree of court.

§ 5. Whenever the court shall grant such judgment of dissolution the clerk thereof shall send a certified copy of the order of the court to the secretary of State, the expense of which shall be taxed as costs in the case, and said copy shall be filed with the incorporating papers of such company. (Approved April 17, 1899.)

See Anno. Corp. L., Mo., p. 28, § 2513.

## DECISIONS.

(Include 52 S. W. Rep. 792.)

**Fraud of promoter.**

Where a promoter acts in his own interest in a sale of land to a corporation on which he has an option, he is liable to the corporation for any profit he makes in the transaction. *Exter v. Sawyer* (Sup. Ct. Mo.), 47 S. W. Rep. 951 (1898).

Where a corporation, on being informed of the fraud by a stockholder, fails to sue, the stockholder may sue in behalf of all the stockholders. *Id.*

The fact that the sale was not fraudulent as to some of the stockholders is not a bar to an action by the corporation. *Id.*

**General powers; ultra vires.**

The legislature cannot, by recognizing powers which did not theretofore exist, in graft, by implication, new powers on a corporation. *State ex rel. Crow v. Lincoln Trust Co.*, 144 Mo. 562; 46 S. W. Rep. 593 (1898). To estop the State from proceeding against a corporation for exceeding its authority, on the ground that subsequent legislation recognized the acts alleged as ultra vires, such legislation must have been enacted in reference to such corporation. *Id.*

The rule reiterated with many authorities, that corporations possess only statutory powers expressly conferred, or necessary to carry into effect some specified power. *Id.*

The enumeration of certain powers excludes others not enumerated. *Id.*

**Officers.**

Revised Statutes, 1889, section 2399, provides that "a private corporation authorized to hold real estate may convey same by deed, sealed with the common seal of such corporation, signed by the president or presiding member or trustee thereof." The by-laws provided that the vice-president might act in the absence of the president, but that he could only do so by order of the directors. Held, that a deed executed by the vice-president was *prima facie* valid, but was invalid if executed without the authority of the directors. *Hall v. Farmers & Merchants' Bank* (Sup. Ct. Mo.), 46 S. W. Rep. 1000 (1898).

**Directors; meetings.**

By-laws provided that if three directors were present, they could hold a meeting without notice. This does not imply that a meeting held in a sick room of one of the directors, to which he did not consent, is valid. Validity involves the consent of at least three directors. *State v. Manhattan Rubber Mfg. Co.* (Sup. Ct. Mo.), 50 S. W. Rep. 321 (1899).

**Liability of stockholders.**

Persons who organize a corporation and do business as directors without the amount required by the statute (section 2768), having been paid in, become liable to creditor for the difference between the amount actu-

## Decisions.

ally paid in and the amount which should have been paid in. *Hequembourg v. Edwards* (Sup. Ct. Mo.), 50 S. W. Rep. 908 (1899).

An action for such difference is not an action for conversion. *Id.*

Under section 2768, which provides that the articles shall set forth that one-half of the par value of the stock has been paid up in lawful money, defendants are estopped, in an action by the assignee of the corporation, from proving that it was agreed they should do business on a less amount than that stated in the articles. *Id.*

See Anno. Corp. L., Mo., p. 34.

#### Estoppel.

Persons conveying land to a corporation and receiving payment therefor are estopped from questioning its corporate character and authority to take land. *White Oak Grove Benev. Soc. v. Murray*, 145 Mo. 622; 47 S. W. Rep. 501 (1898).

#### Insolvency; preferential transfers.

Directors of an insolvent corporation, executing preferential mortgages, must act in good faith, according to their best judgment, for the interest of the corporation and its stockholders. The burden of proof is on the directors to show such good faith in order to overcome the presumption of fraud which attaches to a transfer of trust property to a trustee. *State v. Manhattan Rubber Mfg. Co.* (Sup. Ct. Mo.), 50 S. W. Rep. 321 (1899).

On the issue of good faith in executing preferential mortgages to themselves, evidence tending to show that an absent director had changed his mind, to their knowl-

edge, was competent, although he had first voted for the scheme. *Id.*

What constitutes good faith discussed with reference to several charges of the court. *Id.*

#### Receivers.

The validity of the appointment of a receiver cannot be attacked collaterally. *Neun v. Blackstone Building & Loan Assn.* (Sup. Ct. Mo.), 50 S. W. Rep. 436 (1899).

Stockholders cannot restrain a receiver from administering the affairs of an insolvent corporation, where their rights may be fully determined in the suit in which he was appointed. *Id.*

Appointment of receiver of manufacturing corporation. Anno. Corp. L., Mo., p. 40, § 2791.

#### Service of process.

Revised Statutes, 1889, section 2527, providing for service of process on officers of the corporation, is exclusive. Service by posting, as provided by section 5094, is not sufficient. *Missouri K. & E. Ry. Co. v. Hoereth* (Sup. Ct. Mo.), 45 S. W. Rep. 1085 (1898).

See Anno. Corp. L., Mo., p. 32.

#### Amendment or repeal of charter.

The general law of 1845 (Revised Statutes 1845, p. 232, § 7), reserving the right to amend, alter or repeal charters of private corporations, applies to charters granted by subsequent legislatures, not expressly excepted from its effect; and a charter thus subjected would not be affected by a subsequent repeal of the law of 1845. *Watson Seminary v. Pike County Court* (Sup. Ct. Mo.), 50 S. W. Rep. 880 (1899).





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MONTANA.

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# MONTANA.

## LAWS OF 1899.

### SENATE BILL No. 41.

#### Trade-Marks.

AN ACT to amend sections 3161 and 3162, of chapter IX, title VII of part III, of the Political Code, relating to the recording of trade-marks.

Section 1. That sections 3161 and 3162, chapter IX, title VII, part III, of the Political Code, be amended to read as follows:

§ 3161. Any person may record any trademark or name, by filing with the secretary of State his claim to the same, and a copy or description of such trade-mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he, or the firm or corporation of which he is a member, is the exclusive owner, or agent of the owner of such trade-mark or name.

§ 3162. The secretary of state must keep for public examination a record of all trademarks or names filed in his office, with the date when filed and the name of the claimant, and must not record any two like trademarks or names. He must at the time of filing and recording a trade-mark or name, collect from the claimant a fee of three dollars. (Approved February 25, 1890.)

### HOUSE BILL No. 151.

#### Fees of Secretary of State.

AN ACT to amend section 410 of the Political Code of Montana, relating to the fees of the secretary of State.

Section 1. That section 410 of the Political Code of Montana be, and the same is, hereby amended so as to read as follows:

§ 410. The secretary of State, for services performed in his office, must charge and collect the following fees:

I. For each copy of any law, resolution, record or other document or paper on file in his office, twenty cents per folio.

II. For affixing certificate and seal, one dollar.

III. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

IV. For recording and filing each certificate of incorporation, and each certificate of increase of capital stock, he shall charge and collect the sum of fifty cents on each one

thousand dollars of the capital stock of any company or corporation, provided that whenever the capital stock of any corporation shall exceed one million dollars, he shall charge and collect the sum of twenty-five cents on each one thousand dollars of the capital stock in excess of one million dollars; provided, that he shall charge and collect from each company or corporation not less than twenty dollars for recording and filing each certificate of incorporation and each certificate of increase of capital stock; which sum shall include the fee of issuing the certificate of incorporation or the certificate of increase of capital stock where the capital stock is thirty-four thousand dollars or less; provided, however, that no company or corporation shall be required to pay a fee in excess of one thousand dollars for filing its articles of incorporation or certificate of increase of capital stock.

V. For issuing each certificate of decrease of capital stock, five dollars.

VI. For recording and filing each certificate of decrease of capital stock, five dollars.

VII. For issuing each certificate of continuance of corporate existence, three dollars.

VIII. For recording and filing each certificate of continuance of corporate existence, he shall charge and collect the sum of twenty-five cents on each one thousand dollars of the capital stock, of any company or corporation; provided, that whenever the capital stock of any corporation shall exceed one million dollars, he shall charge and collect the sum of ten cents on each one thousand dollars of the capital stock in excess of one million dollars; provided, however, that no company or corporation shall be required to pay a fee in excess of one thousand dollars for filing its certificate of continuance of corporate existence.

IX. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making stock assessable, five dollars.

X. For filing each certified copy of the charter, or articles of incorporation of any foreign corporation, twenty dollars.

XI. For filing each notice of appointment of agent, five dollars.

XII. For filing each annual or semi-annual statement of any foreign corporation, five dollars.

## Decisions.

XIII. For receiving and recording each official bond, two dollars.	XVIII. For filing any other paper, not otherwise herein provided for, one dollar.
XIV. For each commission or other document, signed by the governor and attested by the secretary of State (pardons and military commissions excepted), five dollars.	But no member of the legislative assembly, or State or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of State, must be paid to the State treasurer at the end of each quarter, as provided for in the Constitution. (Approved March, 2, 1899.)
XV. For searching records and archives of the State, one dollar.	
XVI. For filing each trade-mark, three dollars, and for issuing each certificate of record, one dollar.	
XVII. For recording miscellaneous records, papers or other documents, twenty cents per folio.	

## DECISIONS.

(Include 58 Pac. Rep. 192.)

**Application of Code.**

Civil Code section 401 making corporations formed before the act took effect subject to laws then existing, and corporation formed thereafter to be subject to the Code, is constitutional. *Menard v. Montana Cent. Ry. Co.*, Sup. Ct., Mont., 56 Pac. Rep. 592 (1899). See Anno. Corp. L., Mont., p. 11.

**Power of officers.**

A general manager of a corporation will not be presumed to have power to grant an easement or give a license in the corporation's lands. *Butte & Boston Consol. Min. Co. v. Montana Ore Purchasing Co.*, Sup. Ct., Mont., 55 Pac. Rep. 110 (1898).

Comp. Stat., 1887, div. 5, §§ 492-494, providing that the officers of a mining corporation shall have no power to sell \* \* \* or otherwise dispose of, "the whole or part of mining grounds," etc., without such transfer being first approved by the holders of two-thirds of the stock, at a meeting at which at least three-fourths of the stock is represented, and that, if such sale be of the corporate property, the corporation shall be dissolved, is merely a limitation of the common-law powers of the directors and majority stockholders, and does not authorize two-thirds of the stock of a prosperous concern to sell all of its property against the protest of any other shareholder. *Forrester v. Boston & M. Consol. Copper, etc., Co.*, Sup. Ct., Mont., 55 Pac. Rep. 229 (1898), reargued, 55 Pac. Rep. 333.

**Liability of directors.**

The directors are personally liable for death from the explosion of powder unlawfully kept in the corporation's warehouse,

though they had no knowledge thereof, if by exercising ordinary diligence as directors, they could have known that the warehouse contained an unlawful amount. *Cameron v. Kenyon-Connell Commercial Co.*, Sup. Ct., Mont., 56 Pac. Rep. 358 (1899). The burden is on the directors to show that by the exercise of ordinary diligence, they could not have discovered that the powder was stored in unlawful quantities. *Id.*

**Rights of minority.**

The ratification by a majority of the stockholders of an illegal and incomplete transfer of the corporate property may be enjoined by the minority stockholders, even though their stock was acquired after the transfer was made. *Forrester v. Boston & M. Consol. Copper, etc., Co.*, Sup. Ct., Mont., 55 Pac. Rep. 229; reargued 55 Pac. Rep. 353 (1898). What constitutes laches. *Id.*

The holders of after-acquired stock may enjoin the ratification of an illegal transfer of corporate property, the former owners of the stock not having participated in the transaction. *Forrester v. Boston & M. Consol. Copper, etc., Co.*, Sup. Ct., Mont., 55 Pac. Rep. 353 (1898).

**Liability of stockholders.**

Since Comp. Stat. 1887, div. 5, ch. 25, § 457, a judgment creditor whose execution against the corporation has been returned unsatisfied may go into equity to obtain relief against the stockholders. Under the provisions of the Const., art. 15, § 10, and §§ 457 and 458 of the Compiled Statutes, by which a stockholder is liable for the amount unpaid on his stock until the whole amount of

## Decisions.

stock subscribed for has been paid in, an issue of stock as full paid for property at a false valuation, renders the stockholders liable for the difference between the actual value of the property and the par value of the stock. *Kelly v. Fourth of July Min. Co.*, Sup. Ct. Mont., 53 Pac. Rep. 959 (1898).

One accepting mining stock issued to him with knowledge that it represented a mine worth only one and two-thirds per cent. of the total stock subscribed cannot escape liability to creditors for the unpaid balance on the ground that he did not sign the stock subscription list. *Id.*

See Anno. Corp. L., Mont., p. 18 and p. 7.

**Receivers.**

A shareholder of a corporation may procure the appointment of a receiver pending an investigation of charges of fraud and mismanagement against the trustees. *State ex rel. Boston & M. Consol. Copper, etc., Co. v. District Court of Silverbow Co.*, Sup. Ct. Mont., 56 Pac. Rep. 219 (1899). The appointment of a receiver of a corporation pen-

dente lite does not necessarily mean its dissolution. *Id.*

See Anno. Corp. L., Mont., p. 27.

**Foreign corporations.**

It is not necessary for a foreign corporation bringing action on a domestic contract, to allege that it has complied with the statutory conditions precedent to doing business in the State, where the petition shows facts making the transaction *prima facie* interstate commerce. *Zion Co-operative Mercantile Assn. v. Mayo*, Sup. Ct. Mont., 55 Pac. Rep. 915 (1899).

Failure of mortgagee to comply with State law governing foreign corporations does not avoid a decree of foreclosure as against attaching creditors of mortgagor. *Miller v. Yates*, Sup. Ct. Mont., 56 Pac. Rep. 356 (1899). A false allegation that the mortgagee has complied with State laws governing foreign corporations does not avoid decree of foreclosure as against attaching creditors of mortgagor. *Id.*

Foreign corporations, see Anno. Corp. L., Mont., p. 24.







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## NEBRASKA.

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# NEBRASKA.

## LAWS OF 1899.

### CHAPTER 33.

#### Receivers.

AN ACT concerning the compensation of receivers.

Section 1. Receivers shall receive for their services such compensation as the court in its discretion may award, subject to the following restrictions:

First, Receivers appointed for the purpose of preserving and protecting property pending litigation or for the purpose of continuing the business of the debtor or corporation pending litigation or when financially embarrassed may be awarded a salary or lump sum;

Second, Receivers appointed for the purpose of winding up the affairs of a debtor or corporation reducing the assets to cash and distributing them shall be awarded as compensation for such services a percentage upon the cash received and properly accounted for by them. Which percentage may be increased where extraordinary services have been performed and correspondingly reduced where the services have not been meritoriously performed.

### CHAPTER 34.

#### Fire Escapes.

§ 4. That within six (6) months after the passage of this act, all buildings in this State, which are four or more stories in height, excepting such as are used for private residences exclusively, but including flats and apartment buildings, shall be provided with one or more metallic ladder or stair fire escapes attached to the outer walls thereof, and provided with platforms of such size and dimensions, and such proximity to one or more windows of each story above the first, as to render access to such ladder or stairs from each such story easy and safe, and shall also be provided with one or more automatic metallic fire escapes, or other proper devices, to be attached to the inside of said buildings so as to afford an effective means of escape to all occupants who, for any reason, are unable to use said ladders or stairs; the number, material, location and construction of such escapes to be subject to the approval of the commissioner of labor or his deputy; Provided, however,

that all buildings more than two stories in height used for manufacturing purposes, or for hotels, dormitories, schools, seminaries, hospitals, or asylums, shall have at least one such fire escape for every fifty persons, and one such automatic metallic escape for every twenty-five persons, for which working, sleeping, or living accommodations are provided above the second stories of said buildings; and that all public halls, which provide seating room above the first or ground story, shall be provided with such numbers of said ladders or other fire escapes as said commissioner of labor or his deputy shall designate.

### CHAPTER 107.

#### Hours of Labor of Females.

AN ACT to regulate and limit the hours of employment of females in manufacturing, mechanical and mercantile establishments, hotels and restaurants; to provide for its enforcement and a penalty for its violation.

Section 1. That no female shall be employed in any manufacturing, mechanical or mercantile establishments, hotel or restaurant in this State more than sixty hours during any one week and that ten hours shall constitute a day's labor. The hours of each day may be so arranged as to permit the employment of such females at any time from six o'clock a. m. to ten o'clock p. m.; but in no case shall such employment exceed ten hours in any one day.

§ 2. Every such employer shall post in a conspicuous place in every room where such females are employed, a printed notice, stating the number of hours work required of them each day of the week the hours commencing and stopping such work and the hours when the time or times allowed for dinner or for other meals begins and ends. Printed forms of said notice shall be furnished by the deputy labor commissioner, and the form of such notice approved by the attorney-general of this State.

§ 3. Every such employer in such establishment, shall provide suitable seats for the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

## Decisions.

§ 4. Any employer, overseer, superintendent or other agents of any such employer who shall violate any of the provisions of this act, shall be fined for each offense in a sum not less than twenty dollars nor more than fifty dollars; and it is hereby made the duty of the deputy labor commissioner to enforce the provisions of this act; Provided, however, that nothing in this act shall be construed to prevent any other person from enforcing its provisions.

**CHAPTER 108.****Employment of Children.**

**AN ACT** to regulate the employment of children in manufacturing, mechanical, industrial and mercantile establishments, to provide a penalty for its violation and the enforcement of its provisions and to repeal sections 245aa, 245bb, and 245cc of the Criminal Code of the State of Nebraska; That the provisions of this act shall be known as sections 245aa, 245bb, 245cc, 245cc-1, 245cc-2, 245cc-3 of the Criminal Code of Nebraska.

§ 245aa. That any male or female child under the age of ten years shall not be employed in any manufacturing, mechanical, industrial or mercantile establishment.

§ 245bb. That any male or female child under the age of fourteen years shall not be employed in any manufacturing, mechanical, industrial or mercantile establishment, except during the vacations of the public schools; unless during the year next preceding such employment, said child has for at least twenty weeks attended some public or private day school where the English is taught; nor shall such employment continue, unless such child shall in each and every year attend school as herein provided, and no child shall be so employed who does not present a certificate signed by the president and secretary of the school board of the school district in which said child resides, of their compliance with the requirements of this section. Nor shall any owner, superintendent or overseer of any such establish-

ment, parent or guardian consent to or permit the employment of any child contrary to the provisions of this act.

§ 245cc. Any owner, superintendent or overseer of any such establishment, shall require and keep on file, open to the inspection of the public, a certificate of the age, place of birth and residence of every male and female child under sixteen years of age employed therein, so long as such child is so employed; which certificate shall also state, in case the child is under fourteen years of age, the amount of said child's school attendance during the year next preceding his employment, and such certificate shall be signed by the president and secretary of the school board of the school district in which such child resides, and the forms of certificate herein referred to shall be approved by the attorney-general of this State.

§ 245cc-1. Any person who shall be convicted of a violation of any of the provisions of this act shall pay for every such offense a fine of not less than twenty dollars nor more than fifty dollars; Provided, however, That no conviction shall be had under this act, unless the proceedings therefor shall be commenced within one year after the offense shall have been committed.

§ 245cc-2. It is hereby made the duty of the deputy labor commissioner of this State upon complaint being filed with him to inspect any and all establishments to which this act applies, and ascertain whether any of the provisions of this act have been violated. Whenever it shall come to his knowledge that any of the provisions of this act have been or are being violated, it shall be his duty to cause the same to be enforced. Provided, however, That nothing in this section contained shall be construed to prevent any other person from causing the enforcement of the provisions of this act.

§ 245cc-3. Sections 245aa, 245bb, and 245cc of the Criminal Code now in force are hereby repealed, and the provisions of this act shall be known as sections 245aa, 245bb, 245cc, 245cc-1, 245cc-2, 245cc-3, of the Criminal Code of the State of Nebraska.

**DECISIONS.**

(Include those contained in 78 N. W. Rep.)

**Stock assessments.**

In the absence of statutory authority or power given by articles of incorporation there can be no assessment against or on paid-up stock of a corporation. The fully-paid-up stock of a corporation is the per-

sonal property of the owner, and the articles of incorporation and laws of the State are elemental of the contract existent between the corporation and the owner of stock, and may not be so amended by legislative enactment as to make the paid-up stock subject to

## Decisions.

an assessment on general or specific assessments, and forfeitable or subject to summary sale by the corporation for the non-payment of such assessment. *Enterprise Ditch Co. v. Moffitt*, 79 N. W. Rep. 560.

An assessment, as that term is understood in corporation law, is a levy made on the stock of the corporation requiring the stockholder to pay in proportion to the amount of stock owned by him. *Omaha Law Library Assn. v. Connell*, 55 Neb. 396; s. c., 75 N. W. Rep. 837.

*Neb. Stats., § 351; Anno. Corp L., Neb., p. 15.*

In a suit against a stockholder to recover assessments levied against him, it will be presumed that the stock certificate bearing the corporate seal of the corporation was issued and signed by the officer having authority so to do. In such a suit the validity of the incorporation of the corporation is a collateral issue, and the stockholder is estopped from asserting that it is not a corporation *de jure*. *Davis Est. v. Watkins*, Sup. Ct. Neb.; s. c., 76 N. W. Rep. 574.

#### Suit to recover subscriptions; pleadings.

Where in a suit by a corporation against a subscriber to its stock to recover his unpaid subscription, the defense is that the entire capital stock was not subscribed, a reply which avers that the defendant waived the non-payment of the entire stock is good as against a demurrer. Such a plea is not a conclusion of law, but the averment of an ultimate fact, included in which are all the ingredients which constitute waiver. Under such a plea the acts and omissions of the defendant which tend to show, or from which may be inferred, an intention on his part to waive subscription of the entire capital stock, is competent and relevant. *Macfarland v. West Side Imp. Assn.*, 76 N. W. Rep. 584.

#### Suits by receivers on stock subscriptions.

A suit by the receiver of a corporation against stockholders, to recover their unpaid stock subscriptions, will not lie until the amount justly due from the corporation has been ascertained, and the corporate property exhausted. Where the directory of a corporation, before it is put into the hands of a receiver, makes a call or assessment on the stock subscribers for all or a part of their stock subscriptions, such calls become at once corporate property or assets of the corporation, and may be sued for and collected by a receiver subsequently appointed, as any other assets of the corporation. *Wyman v. Williams*, Sup. Ct. Neb.; s. c., 74 N. W. Rep. 48.

#### Preferences of directors and officers by insolvent corporations.

A director of an insolvent corporation may not through any advantage gained by reason of, or which may be taken of, his director-

ship, obtain or receive a preference of a debt of the corporation to him, or in which he is materially interested; but a judgment for such a debt, received without any such advantage, will be upheld, even though it may work a preference of the debt. One of the directors of a corporation, who had made it a loan and who under the order of the managing board relative to issuance of promissory notes to members who had made loans to the company, was entitled to receive such a note, died, and his son was appointed administrator of the estate and became a director of the corporation. He applied for and there was issued to him as administrator, a note of the corporation in the amount of the loan debt. The corporation became insolvent, and thereafter there was recovered a judgment against it, and in favor of the administrator by default, for the amount due on the note. It was held, from the evidence, that there had been no advantage taken by the son of the deceased director, as administrator of his estate, of the former's position of director of the corporation, to obtain in the suit and judgment on the note, a preference over other creditors of the corporation. *Nebraska Nat. Bank v. Clark*, 78 N. W. Rep. 527.

*See Neb. Stats., § 326; Anno. Corp. L., Neb., p. 9.*

In the absence of actual fraud an insolvent corporation may prefer one or more of its creditors to the exclusion of others. But a corporation may not prefer a debt owing to its secretary, treasurer, or a director. *Seeds Dry-Plate Co. v. Heyn Photo-Supply Co.*, Sup. Ct. Neb.; s. c., 77 N. W. Rep. 660.

The directors of an insolvent corporation cannot lawfully appropriate its assets to the payment of debts due them from it, to the entire exclusion of the other corporate creditors. *Wyman v. Williams*, Sup. Ct. Neb.; 74 N. W. Rep. 48.

#### Insolvency; void mortgage to officers.

The assets of an insolvent corporation constitute a trust fund in the hands of its directors to be used by them in paying corporate debts. A mortgage executed by an insolvent corporation to secure a debt due from it to one of its officers or directors is illegal and void. So, also, is a mortgage executed to a third person to secure a debt for the payment of which one of its officers or directors is personally bound. *Stough v. Ponca Mill Co.*, 51 Neb. 500; s. c., 74 N. W. Rep. 868.

#### Preference of creditors of insolvent corporation.

An insolvent corporation, merely because it is a corporation, is not prohibited from preferring particular creditors. A corporation resolved to remove its stock of merchandise to a distant city and effect a consolidation there with another corporation.

## Decisions.

Afterwards, its managing officers determined, in order to avoid trouble with creditors, to retain a portion of the goods, sell them, and apply the proceeds to the payment of debts. No trust was created, and no provision made for the manner of the application of the proceeds. It was held that this arrangement did not constitute the goods a trust fund for the payment of creditors pro rata. *German Nat. Bank v. First Nat. Bank*, 55 Neb. 86; s. c., 75 N. W. Rep. 531.

Creditors of an insolvent corporation do not acquire any specific lien on the corporate assets. Until the legal remedy against the corporation has been exhausted, a creditor of an insolvent and dissolved corporation cannot obtain satisfaction of his claim by suit against a stockholder who has in any way come into possession of corporate assets. *Wehn v. Fall*, 55 Neb. 547; s. c., 76 N. W. Rep. 13.

**Insolvency; illegal transfer.**

The president, one director and a stockholder who was not a director, acting without authority from the board of directors, sold all the visible assets of an insolvent corporation, and turned the proceeds of the sale over to a single creditor, a corporation, in which two of the persons so acting were interested, and of which they were directors. It was held that such acts amounted to a conversion of the corporate property. Such acts were reported to a meeting of the board of directors, attended by four out of seven members, two of whom were directors of the preferred corporation. No action was taken. This did not constitute a ratification of the acts of the persons selling the assets and paying out the proceeds. If a transaction between two corporations effected by the votes of directors common to both, can, in any court, be sustained, it must only be on an affirmative showing of good faith. *Id.*

**Liability of stockholders; effect and application of constitutional provision.**

It is the settled doctrine of the Supreme Court of Nebraska that the liability of a stockholder of a banking corporation, under the provisions of section 7 of article 13 of the Constitution, is for the creation of a trust fund for the benefit of all creditors, and an action to enforce such liability must be prosecuted for the benefit of all the creditors of the corporation against all the stockholders within the jurisdiction of the court. *Pickering v. Hastings*, Sup. Ct. Neb.; s. c., 76 N. W. Rep. 587.

*Neb. Const.*, art. 13, § 7; *Anno. Corp. L.*, Neb., p. 7.

This section is applicable to the stockholder's liability in banking corporations, as described in section 7 of this article. Such liability must be enforced by or on behalf of all creditors and against all stockholders

liable. *Hastings v. Barnd*, 55 Neb. 93; s. c., 75 N. W. Rep. 49.

**Action to enforce liability.**

An action for the enforcement of the individual liability of the stockholders of a banking corporation must be prosecuted by one creditor for the benefit of all, or by the receiver of the corporation. A creditor may not intervene in such an action instituted by the receiver, at least where it is not made to appear that the receiver is not prosecuting the case in good faith for the best interests of the creditors, or in some way has disregarded or violated the duties of his trust in that regard. *Brown v. Brink*, 78 N. W. Rep. 280.

**Accrual of action to enforce liability.**

A corporation creditor's cause of action against stockholders to subject their unpaid stock subscriptions to the payment of his debt accrues when the exact amount justly due the creditors from the corporation has been ascertained and the corporate property exhausted. Within the meaning of this section (*Const.*, art. 13, § 4; *Anno. Corp. L.*, Neb., p. 6.), the exact amount justly due has been ascertained when the creditors' claim against the corporation has been reduced to judgment; and the corporate property has been exhausted when execution issued in such judgment has been duly returned unsatisfied. To such a suit the corporation is not a necessary party. *Van Pelt v. Gardner*, 54 Neb. 701; s. c., 75 N. W. Rep. 974; s. c. reported 74 N. W. Rep. 1085.

**Liability cannot be limited.**

A provision in the charter of a corporation that the private property of a stockholder shall not be liable for the debts of the corporation, is void in so far as it attempts to exempt the stockholder from liability for his unpaid stock subscription for the payment of corporate debts. The present Constitution not only determines what the liability of a stockholder in a corporation for the corporate debts thereof shall be, but it limits this liability; and it is not within the power of the legislature to extend it. *Id.*

**Extent of liability.**

The liability of a stock subscriber for corporate debts, except he be a stock subscriber of a banking corporation, is limited to the amount of his unpaid stock subscription. As between the stock subscribers and the creditors of a corporation, each stock subscriber is liable to the extent of his unpaid stock subscription. As between themselves, each stock subscriber is liable for his proportionate share of the corporate debts; and one stock subscriber who has been compelled to pay more than his proportionate share, may sue his co-subscribers for contribution. *Id.*

## Decisions.

**Parties to action.**

One creditor of a corporation cannot maintain an action in his own name and for his own benefit against the debtor stock subscribers of a corporation; but, to subject unpaid stock subscriptions to the payment of corporate debts, all debtor stock subscribers and all creditors of the corporation within the jurisdiction of the court should be made parties. *Id.*; *German Nat. Bank v. Farmers & Merchants' Bank*, Sup. Ct. Neb.; s. c., 74 N. W. Rep. 1086.

**"Ascertained,"** means what, in const., art. xiii, § 4.

The word "ascertained" as used in this section means judicially ascertained; and to judicially ascertain the amount due from a corporation to its creditor, there must be a finding and judgment or decree of a court as to such amount. *German Nat. Bank v. Farmers & Merchants' Bank*, 54 Neb. 593; s. c., 74 N. W. Rep. 1086.

**Contribution between stockholders.**

Where a stock subscriber discharges a debt of an insolvent corporation for which all the stock subscribers thereof are liable, he may maintain an action for contribution against his co-stock subscribers. He is not estopped from maintaining such a suit, because he participated in a distribution made of the assets of the corporation by the stockholders thereof, the debt discharged by him not being provided for in such distribution. *Bennison v. McConnell*, Sup. Ct. Neb.; s. c., 76 N. W. Rep. 412.

Within the common-law rule, there was no individual liability of stockholders in a corporation for its debts. The above section (Const., art. XIII, § 4) limits the liability of stockholders for the corporate debts. Such liability is measured by the stockholder's unpaid subscription. A voluntary assumption of the debt of a corporation, or a voluntary payment of its debt, or the two in combination, will not alone confer on a stockholder the right to contribution from the other stockholders. An agreement by stockholders to indemnify one for the personal assumption or payment of a corporate debt, or to contribute, may be enforced. *Gorder v. Connor*, Sup. Ct. Neb.; s. c., 77 N. W. Rep. 383.

**Overvaluation of property in payment of stock subscription.**

Owners of property have a right, in disposing of it, to place such valuation thereon as they see fit; and if, with such property at an overvaluation, they pay for capital stock issued to them by a corporation, the excess above the real value of the property cannot subsequently be treated by creditors of the corporation as never having been paid, in the absence of fraud, misrepresentation, suppression of the truth, and the violation of the obligations of law or morality,

express or implied. A purchaser of capital stock from one who has fully paid for the same in property, cannot be held liable to creditors of such corporation, solely on the theory that the property, recognized as a proper medium of payment, had been accepted as payment by the corporation at too high a valuation. *Troup v. Horbach*, Sup. Ct. Neb.; s. c., 74 N. W. Rep. 326.

**Liability of stockholders for overvaluation on stock subscription.**

In an action to hold liable to creditors of a corporation certain of its stockholders, because, as found by the court, the property conveyed by such stockholders in payment for their stock was greatly overvalued, a judgment against the stockholders was improperly rendered in view of the further finding that the defendants acted in good faith, and without any attempt to defraud such corporation or its creditors; the evidence being sufficient to sustain both findings. *Penfield v. Dawson Town & Gas Co.*, Sup. Ct. Neb.; s. c., 77 N. W. Rep. 672.

**Right to vote; illegal election.**

*Prima facie*, at least, the right to vote stock in a corporation does not exist until such stock has been registered in the name of the person seeking to vote it. A stockholder may obtain an injunction to restrain persons claiming to have been elected as directors, from acting as such, where the election was illegal and void. *Reynolds v. Bridenthal*, Sup. Ct. Neb.; s. c., 77 N. W. Rep. 658.

Neb. Stats., § 324; Anno. Corp. L., Neb., p. 9; Constitution, art. XIII, § 5.

**Liability of directors for false reports.**

The directors of an insolvent national bank are personally liable, at the suit of one purchasing stock of such bank, for damages sustained by reason of the insolvency of the corporation, where the plaintiff is induced to make such purchase by false representations of solvency, contained in reports made by the bank to the comptroller of the currency, and attested by the directors, and published in pursuance of law, even though the directors were unaware that such reports and representations were false or untrue, and were made without intention to defraud. *Gerner v. Mosher*, 78 N. W. Rep. 384.

Neb. Stats., § 353; Anno. Corp. L., Neb., p. 15.

**Examination of books.**

Assuming it to be the right of a stockholder in a corporation to examine the books thereof, it is not, as a matter of law, his duty to do so, after becoming a stockholder, for the purpose of ascertaining whether or not he has been defrauded in the purchase of such stock; he not being aware of any

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Decisions.

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fact leading to a suspicion that he may have been so defrauded. *Gerner v. Mosher*, 78 N. W. Rep. 384.

Neb. Stats., § 487; Anno. Corp. L., Neb., p. 17.

**Appointment of receiver on application of stockholder.**

A receiver will not be appointed for a corporation at the instance of a stockholder merely because of a difference of opinion between him and the officers or the holders of a majority of the stock as to the proper policy of managing the corporate affairs; but one will be so appointed when it is shown that the officers and the holders of a majority of the stock are fraudulently mismanaging the corporate business, converting its property to their individual use, and abusing their powers to the injury of other stockholders. The wrongdoers being in control of the corporation, both through its stock, and by being the officers thereof, it is not essential for a complaining stockholder to show, as a condition of maintaining his suit, that he first made a demand on the officers to proceed on behalf of the corporation itself to remedy the wrongs complained of. *Ponca Mill Co. v. Mikesell*, 55 Neb. 98; 75 N. W. Rep. 46.

**Actions; summons and pleadings.**

In suing a corporation it is not necessary that in the summons it be described as such. A petition — at least after answer to the merits — is not open to attack because it does not allege the corporate character of the defendant. *German Ins. Co. v. Frederick*, Sup. Ct. Neb.; s. c., 77 N. W. Rep. 1106.

**Actions; pleadings.**

In an action by a corporation, if its name imports a corporation, it is not essential to aver in terms its corporate existence, or to plead the act of incorporation. A general denial does not place in issue the pleaded existence of the corporation. *Fletcher v. Co-operative Pub. Co.*, 78 N. W. Rep. 1070.

**Confession of judgment.**

Under the Nebraska statute corporations for pecuniary profit may sue and be sued, complain and defend, in courts of law and equity, and therefore the statute conferring power upon any person to confess judgment applies to such corporations, and enables it to confess judgment for an amount actually due, if the transaction is without fraud. *Solomon v. C. M. Schneider Co.*, Sup. Ct. Neb.; s. c., 77 N. W. Rep. 65.

**Action to recover price of stock.**

To maintain an action at law for the purchase price of corporation stock, plaintiff ordinarily must plead and prove a delivery or tender of such stock before bringing the suit. *Bartlett v. Scott*, 55 Neb. 477; s. c., 75 N. W. Rep. 1102.

**Ultra vires.**

Where a corporation borrows money and executes a mortgage on its real estate to secure the payment thereof, a third person cannot assail the transaction on the ground of ultra vires, or that the corporation exceeded its power. *Beels v. Nat. Fair and Driving Park Assn.*, 54 Neb. 227; s. c., 74 N. W. Rep. 581.





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## NEVADA.

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# NEVADA.

## LAWS OF 1899.

### CHAPTER 5.

#### Compilation of Laws.

AN ACT to provide for the compiling and publishing of the laws of the State of Nevada. (Approved February 15, 1899.)

The above act provides for a compiled and annotated copy of the laws of the State of Nevada, to be completed by September 1, 1899, and approved by justices of the supreme court. It will probably be published about January 1, 1900, too late for consideration in this annual.

### CHAPTER 9.

#### Increase in Number of Shares.

AN ACT to enable corporations to divide their capital stock into shares of lesser denomination.

Section 1. All corporations organized and existing under the laws of this State, desiring to divide the capital stock of the corporation into shares of smaller denomination than originally issued, may do so by a majority vote of the trustees of the corporation at any regular or called meeting of the trustees, and may issue the stock of such corporation in accordance therewith, after having filed in the office of the secretary of State a certificate setting forth the amount or denomination in which they propose to divide such shares, verified by the affidavit of a majority of such trustees.

§ 2. This act shall not be construed as enabling any corporation to change the amount of its capital stock.

See Anno. Corp. L., Nev., p. 10.

## DECISIONS.

(Include 58 Pac. Rep. 192.)

#### Foreign corporations.

Held, under Laws 1889, p. 47 (Anno. Corp. L., Nev., p. 15, § 1074a), which requires a foreign corporation doing business or owning property within the State to appoint an agent on whom process can be served, and in case of failure, allowing service to be made on the secretary of State, that an allegation that defendant owns certain specified mining claims in the State, is a sufficient showing that it owns property within

the State. *Brooks v. Nevada Nickle Syndicate*, Sup. Ct. Nev., 53 Pac. Rep. 597. If the conveyance as alleged is merely a mortgage, it is a sufficient allegation that the corporation is doing business, and in case of its failure to designate an agent, process may be served on the secretary of State. Id. The fact that the company has no such agent may be shown by the record. Id. The certificate of the sheriff is not sufficient to show that the company has no such agent. Id.







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## **NEW HAMPSHIRE.**

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# NEW HAMPSHIRE.

## LAWS OF 1899.

### CHAPTER 60.

#### Trading Stamps.

AN ACT to prevent the use of trading stamps, coupons and other devices on the sale or exchange of property.

Section 1. No person or company shall, in the sale, exchange, or disposition of any property, give or deliver, in connection therewith or in consideration of said sale, exchange, or disposition, any stamp, coupon, or other device which entitled the purchaser or receiver of said property, or any other person, to demand or receive from any person or company, other than the person mak-

ing said sale, exchange, or disposition, any other property than that actually sold or exchanged; and no person or company, other than the person so selling or disposing of property, shall deliver any goods, wares, or merchandise upon the presentation of such stamp, coupon, or other device.

§ 2. Any person or company who violates any provision of the foregoing section shall for each offense be punished by fine of not less than twenty nor more than five hundred dollars.

§ 3. This act shall take effect April 15, 1899.

(Approved March 9, 1899.)

## DECISIONS.

(Include 44 Atl. Rep. to Oct. 4, 1899.)

#### Pledge of corporate stock to corporation.

The statutes of this State authorize the corporation to take security by mortgage, pledge or attachment of any property, real or personal, for the payment of debts due the corporation. Gen. Stats., ch. 133, §§ 6, 7. The stock of the corporation is property, and is not excepted from this authority. Such statute warrants a pledge by a stockholder of stock of the corporation as security for a claim of the corporation against him. The policy of the law to regard secret liens with disfavor does not apply to such a transaction. A by-law providing for a stockholder's pledge of his stock to the corporation is not within

the prohibition of Gen. Stats., ch. 134, § 13, against restraint on the sale of corporate stock. Costello v. Portsmouth Brewing Co., 43 Atl. Rep. 640.

#### Stockholder's debts to corporation.

When a stockholder contracts a debt to the corporation, with notice of a by-law imposing a lien on his stock for the payment of the debt, and the corporation cancels his stock, and applies it in payment of the debt, as the by-law provides, on a demand and refusal to pay after the debt is due, his title to the stock is lost, with the right to dividends thereon. *Id.*







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**NEW JERSEY.**

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# NEW JERSEY.

## LAWS OF 1899.

### CHAPTER 38.

#### Wages of Employes.

AN ACT to provide for the payment of wages in lawful money of the United States every two weeks.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Every person, firm, association or partnership doing business in this State, and every corporation organized under or acting by virtue of or governed by the provisions of an act entitled "An Act concerning corporations" (Revision of one thousand eight hundred and ninety-six), in this State, shall pay at least every two weeks, in lawful money of the United States, to each and every employe engaged in his, their or its business, or to the duly-authorized representative of such employe, the full amount of wages earned and unpaid in lawful money to such employe, up to within twelve days of such payment; provided, however, that if at any time of payment, any employe shall be absent from his or her regular place of labor and shall not receive his or her wages through a duly authorized representative, he or she shall be entitled to said payment at any time thereafter upon demand; any employer or employers as aforesaid who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars for each and every offense, at the discretion of the court; provided, complaint of such violation be made within sixty days from the day such wages became payable according to the tenor of this act; the provisions of this section shall not apply to any employe or employes engaged in agricultural work or as watermen.

§ 2. It shall not be lawful for any such person, firm, association, partnership or corporation, as aforesaid, to enter into or make any agreement with any employe for the payment of the wages of any such employe otherwise than as provided in section one of this act, except it be to pay such wages at shorter intervals than every two weeks; every agreement made in violation of this

act shall be deemed to be null and void, and the penalties provided for in section one hereof may be enforced notwithstanding such agreement; and each and every employe with whom any agreement in violation of this act shall be made by any such person, firm, association, partnership, corporation or the agent or agents thereof, shall have his or her action and right of action against any such person, firm, association, partnership or corporation, for the full amount of his or her wages in any court of competent jurisdiction in this State.

§ 3. The factory inspector of this State and his deputies shall make complaint against any employer or employers aforesaid who neglects to comply with the provisions of this act for a period of two weeks after having been notified in writing by said inspector or his deputies of a violation of this act; and it is hereby made the duty of county prosecutors of the pleas to appear in behalf of such proceedings brought hereunder by the factory inspector or his deputies.

§ 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 5. This act shall take effect immediately.  
(Approved March 16, 1899.)

### CHAPTER 54.

#### General Assignment Law.

AN ACT concerning general assignments (Revision one thousand and eight hundred and ninety-nine).

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Every conveyance or assignment made by a debtor of his entire estate in trust to an assignee or assignees, for the creditors of such debtor, shall be made for their equal benefit in proportion to the several demands, to the net amount that shall come to the hands of said assignee for distribution, and all preferences attempted to be made in such assignment of one creditor over the other, or whereby any one creditor shall be first paid or have a greater proportion in respect of his claim than

## General assignment.

another, shall be deemed fraudulent and void, and shall render such assignment void.

§ 2. Every debtor residing in this State making a conveyance or assignment of his entire estate, in trust, to an assignee or assignees, for the creditors of such debtor (the said debtor being hereinafter referred to as the assignor, and the said conveyance or assignment as a general assignment), shall acknowledge the same, or cause the same to be proved according to law, so that the same may be recorded as a deed of land, and shall annex to such general assignment an inventory, under oath or affirmation, of his estate, real and personal, together with a list of his creditors and the amount of their respective claims according to the best of his knowledge, but such inventory shall in no wise be conclusive as to the quantum of the assignor's estate, real and personal, but the assignee shall be entitled to any other property which may belong to the assignor at the time of making such general assignment; in case such assignor shall wilfully violate any of the provisions of this section, the said general assignment shall not thereby be rendered invalid or be excluded from the operation of this act, but in such case such assignor shall remain liable to his creditors for any remaining indebtedness after distribution by the assignee, and shall not receive any of the benefits hereinafter provided for assignors in the twenty-second section of this act.

§ 3. The said assignee, upon receiving such general assignment mentioned in the preceding section of this act, shall forthwith record the same, if the same has been acknowledged or proved according to law, in the county where such assignor resides, and in any other counties or States where he may deem it necessary to record the same, and shall also forthwith give public notice by advertising at least once a week for four weeks successively, in one of the newspapers printed in this State, circulating in the neighborhood where such creditors reside, making known thereby that such general assignment has been made, and when made, and setting forth a general description of any business carried on by the assignor and the place where the same was so carried on, and that all claims of creditors against said estate must be presented under oath or affirmation to the said assignee within three months from the date of said general assignment, or the same will be barred from coming in for a dividend of said estate; and the said assignee shall also, within thirty days after the date of said general assignment, mail a copy of said notice, with postage prepaid, to every creditor of said assignor, addressed to such creditor at his usual post-office address, so far as said assignee can ascertain the same; and the said assignee shall forthwith exhibit to the surrogate of the county wherein such assignor resides, under oath or affirmation,

a true inventory and valuation of said estate so far as has come to his knowledge, and shall, after exhibiting such inventory and valuation, forthwith enter into bond to the ordinary of this State, in such amount and with such sufficient security as the orphans' court of the said county, or any judge thereof, may approve, for the faithful performance of his trust, which bond shall be filed in the office of the surrogate of the said county; until such inventory, valuation and bond shall be filed the said assignee shall not proceed to the discharge of his trust under the said general assignment, further than may be necessary for the preservation of the assigned estate; provided, however, that the said orphans' court, or any judge thereof, before such inventory, valuation and bond shall be filed, may, by order, authorize the said assignee to perform such other acts in the administration of said trust as said court or judge may deem necessary for the protection of said creditors, upon such terms as said court or judge may impose; in case of failure to give such notice, or mail the same as above provided, the said orphans' court may extend and fix the time for the presentation of claims and the giving and mailing notice thereof as aforesaid.

§ 4. At the expiration of the said period of three months from the date of said general assignment, or in case of an extension of time for the presentation of claims by said orphans' court as aforesaid, then at the expiration of such extended time, the said notice having been duly given and mailed as aforesaid, the said assignee shall file with the surrogate of the said county a true list, under oath or affirmation, of all such creditors of said assignor as shall have proved their claims as such before him, with a true statement of their respective claim, and due proof of the publication of the notice of said general assignment, and the mailing of such notice as provided in the third section of this act, which proof shall give in detail the names of the persons to whom, with the respective addresses to which, and the time when such notices were mailed, and within ten days after the filing of said list and statement the said assignee shall mail notice, with the postage prepaid, of the filing thereof to every creditor of said assignor who has proved his claim, addressed to such creditor at his usual post-office address, so far as said assignee can ascertain the same, and shall, within the said ten days, also file with said surrogate due proof of the mailing of the last-mentioned notice as above prescribed: in case of failure to file the said list and statement, or to file proof of the publication and mailing of said notice provided in the third section of this act, or in case of failure to mail the said notice of the filing of said list and statement, or to file the proof thereof, the said orphans'

## General assignment.

court may extend and fix the time for the performance of any or all of the duties of the assignee above prescribed, which he may have failed to perform.

§ 5. Every creditor presenting a claim under the provisions of this act to an assignee, shall set forth in his claim any mortgage or pledge of property of the assignor, or lien thereon, which he holds, or which stands as security for his debt, or upon failure so to do, shall be deemed to have waived and abandoned such mortgage, pledge or lien, as against the said assignee; any creditor whose debt stands secured by any such mortgage, pledge or lien, shall have a right to dividends only upon the balance of his debt after deducting the value of his said mortgage, pledge or lien, which value may be ascertained by agreement between him and the assignee, or by the said orphans' court upon application of said creditor or said assignee, and after such ascertainment the said mortgage, pledge or lien, if the same shall not have been realized on, shall stand as security only for the amount which shall have been so ascertained; any creditor may present not only any debt due, but any debt to grow due, making in such case a reasonable rebate when interest is not accruing on the same.

§ 6. It shall be lawful for the said assignee, or any creditor or other person interested by himself or attorney, at any time within thirty days after the said list and statement shall have been filed and notice thereof shall have been mailed to the creditors, as directed in the fourth section of this act, to file in said orphans' court exceptions to the claim or demand of any creditor exhibited as aforesaid, and said court shall cause a notice to be served on said creditor, in such mode as the said court may direct, and said court shall then proceed to hear the proofs and allegations of the parties at the term at which such exceptions shall have been filed, or at any subsequent term, and adjudicate thereon; and in case of such hearing before the orphans' court the evidence and proceedings before the orphans' court, upon the application of either party, shall be reduced to writing by the register of the court or by a stenographer, under the direction of said court, appointed by said court for that purpose.

§ 7. It shall be lawful for the said assignee or any creditor or other person interested in any account to which exceptions have been filed as aforesaid, to demand a trial by jury, whereupon the orphans' court in which such exceptions shall be filed shall certify said exceptions, and the claim or demand excepted to, to the circuit court of the county, to be tried in a summary way by a jury before said court, under such rules as the said court may from time to time prescribe; and the verdict, unless set aside by a new trial granted by said circuit court, shall be returned to the said orphans' court

with the certificate of said circuit court, to be there proceeded on according to law.

§ 8. If no exceptions to any claim or demand shall be filed as provided by the sixth section of this act, or in case any exceptions shall be filed, then after the same shall have been adjudicated or settled as aforesaid, the said assignee shall proceed to make from time to time fair and equal dividends among said creditors from the assets which shall come to hand in proportion to their claims; in case the determination of any claim or claims shall be delayed by exceptions, or for any other reason, the said orphans' court may, in its discretion, on the application of the assignee or any creditor, from time to time, direct the said assignee to make such partial distribution from the assets in hand to those creditors whose claims are not in dispute as may be safely made, reserving at all times sufficient assets to secure, after all the claims shall have been adjudicated and finally settled, an equal and proportionate distribution according to the intent of this act, and the said orphans' court may also, in its discretion, upon application of said assignee, or of any creditor, take charge of the making of any or all dividends and direct the time when the same shall be made and the amount thereof.

§ 9. As soon as may be, after the determination of all claims, the said assignee shall render on oath or affirmation, a final account to the said orphans' court in like manner and upon the same notice to creditors and others interested as is now or may hereafter be directed in regard to executors and administrators; and exceptions may in like manner be filed to such accounts and proceeded upon as prescribed in regard to executors and administrators, and the settlement and decree of said court shall be conclusive on all parties except for assets which may afterwards come to hand, or for frauds or apparent errors; the said orphans' court may, in its discretion, upon the application of said assignee or any creditor, order the said assignee in like manner to render an intermediate account, and in such case the same shall be filed in like manner and upon the same notice to creditors and others interested, and shall be subject to exceptions in the same manner as is now or may hereafter be directed in regard to intermediate accounts of executors and administrators, and in like manner such exceptions shall be heard and determined by said court.

§ 10. The wages of clerks, mechanics and laborers due from the assignor at the time of making such general assignment, shall be preferred debts and shall be first paid by said assignee before any other claim or debt shall be paid, and in case any such wages shall have been earned, or partly earned, at the time of making such general assignment, but shall not be then payable, the same shall be equitably apportioned and

## General assignment.

shall be paid as preferred debts as aforesaid up to the said time of making said assignment; provided, however, that no payment shall be made as preferred debt to any one person to an amount exceeding three hundred dollars; and in case any claim shall receive preference to the extent of three hundred dollars under this section, any balance of such claim yet remaining unpaid shall be entitled to all dividends to be calculated upon such balance.

§ 11. In case of any such general assignment there shall be reserved of the goods and chattels of any such assignor having a family residing in this State, goods and chattels to the value of two hundred dollars, and all wearing apparel for the use of said assignor and his family; and it shall be the duty of the assignee, at the written demand of said assignor, as soon after the said general assignment is executed as conveniently as may be, to cause a just and true appraisement of the assignor's goods and chattels to be made under oath or affirmation, to be taken before any person authorized to administer an oath, by three discreet and judicious persons to be selected by such assignee, at their actual value, and to set apart for the use of said assignor and his family such of the goods and chattels as he may select from such appraisement, not exceeding in value the said sum of two hundred dollars, which said appraisers shall be allowed for their services fifty cents each, to be paid by said assignee and to be allowed in his account; provided, however, that this section shall not apply to any general assignment of partnership property.

§ 12. In case of any such general assignment where the assignor shall be a tenant, all the goods and chattels of such tenant on the premises, in the possession of such tenant, shall be first bound for the payment of rent due to his landlord; and the said claim for rent in favor of the landlord, not exceeding one year's rent, shall be first paid and satisfied by the assignee out of the goods and chattels of the said tenant which were on the demised premises at the time of the assignment.

§ 13. If the tenant, his assignee, or any other person or persons, shall remove any goods and chattels off or from the demised premises, after the said assignment, it shall and may be lawful for the said landlord, at any time within forty days after such removal, to seize the said goods and chattels in whose handssoever the same may be found, as a distress for his said rent, and proceed with the same in the manner directed by the act concerning distresses, whether the rent by the terms of the lease be due or not, making a rebate on the sum not due, as is now or may hereafter be required, where a party suing out execution pays rent not due to the landlord.

§ 14. Whenever any assignee shall take any real estate of said assignor under such

general assignment, he shall (except as hereafter provided) proceed to advertise and sell the same in such manner as is now or may hereafter be prescribed in the case of an executor or administrator directed to sell lands by an order of the orphans' court for the payment of the debts of a testator or intestate; in all cases where any assignee as aforesaid shall deem it to be for the best interest of the creditors of the assigned estate to make sale of the whole or any portion of the real estate so assigned in trust, at private sale, the said assignee shall have the power to make a contract or contracts for such sale, which contracts shall be subject to the confirmation of the said orphans' court, and in such cases the said assignee shall forthwith, upon making any such contract, present the same by petition to the said orphans' court, for its action thereon, and thereupon the said orphans' court, upon such notice to the creditors as it may direct, shall hear the parties interested and either declare such contract void or confirm the same, and in case of such confirmation the said assignee shall perform the same and convey the real estate in accordance with the terms thereof, and the said assignee may, in like manner, if he at any time shall see fit so to do, submit contracts for the sale of personal estate of all kinds to said orphans' court for its action thereon, which court in like manner may declare void or confirm the same.

§ 15. Every such assignee shall have as full power and authority to dispose of all the estate assigned to him in trust as aforesaid, except as may otherwise be herein provided, as the said assignor had at the time of the general assignment, and to sue for and recover in the proper name of such assignee everything belonging or appertaining to said estate, real or personal, of such assignor, and shall have full power and authority to compromise, settle and compound all claims, disputes and litigations of said assignor, and to refer the same to arbitration, and to agree with any person concerning the same, and to redeem all mortgages and conditional contracts, and generally to act and do whatsoever the said assignor might have lawfully done in the premises; and said assignee may at any time by petition apply to said orphans' court for its advice and direction in regard to any matter or thing connected with the administration of his trust; and thereupon the said court, upon such notice to the creditors as it may direct, shall hear the parties interested who may appear and make such order or decree in the premises as it shall deem advantageous to the said creditors, and upon such proceedings the said court may authorize the said assignee to continue for such a period or periods, and under such conditions as the said court may from time to time prescribe, any business of the

## General assignment.

assignor in which the assigned estate, or any part thereof, may be invested; the said assignee, in addition to the powers which he may exercise as the successor to such assignor, shall also at all times be the representative of the creditors of such assignor, and shall have the same power to set aside conveyances, and to recover or reach assets for the benefit of the creditors of such assignor as a creditor of said assignor would have who had recovered a judgment against said assignor at the date of said assignment, and all conveyances, mortgages and transfers of property, real or personal, made by said assignor, which are void or voidable as against the creditors of such assignor, shall in like manner be void or voidable, as the case may be, as against said assignee.

§ 16. If any person being insolvent or in contemplation of insolvency shall, within two months before the making of the general assignment for the benefit of creditors, regulated by the provisions of this act, and in contemplation of making a general assignment, mortgage, pledge, assign, pay or transfer any of his property, or procure or suffer any of his property to be seized, attached or levied upon, or any lien or incumbrance to be placed or acquired thereon by legal process or otherwise, with a view to giving a preference to any creditor or person having a claim against him, or who is under any liability for him, the person receiving such preference in manner aforesaid, or to be benefited thereby, having reasonable cause to believe that such person is insolvent, or in contemplation of insolvency, and is contemplating making a general assignment, the said mortgage, pledge, assignment, payment, transfer, seizure, attachment, levy, lien or incumbrance shall be void as against the assignee named in such general assignment for the benefit of creditors and his successors in trust, and the said assignee may recover the property given by way of preference or the value thereof from the person so receiving the same or so benefited thereby.

§ 17. In case the said assignee shall die or become incapable of executing his trust the said orphans' court shall, upon application of any party interested, appoint some suitable person or persons as assignee or assignees in the place of such assignee so dying or becoming incapable to execute the said trust; in case any assignee shall embezzle, waste or misapply any part of the trust estate in his hands or under his control, or shall neglect or refuse to execute his trust, or to perform and obey any order or decree of the said orphans' court in respect of his trust, or shall remove from the State, or for a reasonable or just cause manifested to said orphans' court shall desire to be relieved from his office as assignee, then and in every such case the said court shall have the power to remove

said assignee and appoint some suitable person or persons in his stead to execute the said trust; in case it shall be made to appear to the said orphans' court that the holders of two-thirds in amount of the indebtedness entitled to a dividend desire the removal of the assignee, the said court shall make such removal and appoint some suitable person or persons in his stead to execute the said trust, and if the holders of two-thirds in amount of such indebtedness unite in nominating a person or persons, resident in the State, as such assignee, the said orphans' court shall appoint the person so nominated unless the said court shall deem him or them unsuitable; in the cases hereinbefore provided for in this section the said orphans' court may act upon the petition of any creditor or other party interested, and upon such notice to the assignee or creditors as the said court shall direct; in case of the appointment of any new assignee he shall enter into bond to the ordinary for the faithful performance of his trust, in such amount and with such security as the said orphans' court, or any judge thereof, shall direct, and in case at any time the security given by any assignee under or by virtue of this act shall be shown to be insufficient, the said orphans' court shall direct such assignee to give such additional security, by bond to the ordinary as aforesaid, as the said court shall deem proper; upon the appointment of any new assignee as aforesaid the entire trust estate, in whatever form the same then may be, shall forthwith vest in such new assignee and the said orphans' court shall have the power to compel the removed assignee, or the personal representative of the former assignee, to account in said court for his trust, and to deliver possession of the estate in his hands to his successor, and to pay over to such successor any balance found due on such accounting, and to execute such conveyance or conveyances of the trust estate to his successor as the said court may deem proper; and every such new assignee shall have all the powers and perform all the duties (not already performed) conferred and imposed by the said assignment or by this act upon the original assignee in said assignment.

§ 18. The inventory and list of creditors, with the statement of claims required to be filed by the assignee as aforesaid, shall be proved before the surrogate of said county, and be recorded by him in a book to be provided for that purpose and to be called "assignee's book," and for the taking proof of such inventory and list, and for the recording thereof, the surrogate shall be entitled to the same fees as are allowed by law for like services in relation to inventories of the property of deceased persons.

§ 19. Such commissions and allowances shall be to the assignee or to the personal representatives of a deceased assignee, or

## General assignment.

to a person who has been removed by the court from his office as assignee for any cause other than his misconduct, on any intermediate or final account as the said court shall consider just.

§ 20. The same fees shall be allowed in all proceedings under this act to the officers of the orphans' court, as are allowed for like services performed in the settlement of accounts of executors or administrators under the laws of this State.

§ 21. If any creditor shall not exhibit his claim within three months from the date of such general assignment, or within such other time as may have been fixed by the court for that purpose, such claim shall be barred of a dividend except as hereinafter provided; whenever any creditor shall have omitted to file his claim or claims within the time limited by law, and a final dividend shall not yet have been made, it shall be lawful for such creditor, at any time prior to such final dividend being made, to present his claim or claims under oath or affirmation to the assignee, and the same shall thereupon be entitled to share in any dividend which may be made after such presentation thereof; upon the presentation of any such claim the said assignee, before allowing the same, shall give notice thereof by mail, with postage prepaid, to the other creditors who have proved their claims as directed by the fourth section of this act in relation to claims proved in time, and the same shall be subject to all exceptions by said assignee or the other creditors that a claim filed in time would be subject to and may be proceeded with and adjudicated upon in the manner provided in the sixth and seventh sections of this act.

§ 22. Nothing in this act shall be taken or understood as discharging said assignee from liability to his creditors, who may not choose to exhibit their claims, either in regard to the persons of such assignor, or to any estate, real or personal, not assigned as aforesaid, but with respect to the creditors who shall come in under said general assignment and exhibit their demands as aforesaid for a dividend they shall be wholly barred from having afterwards any action or suit at law or equity against such assignor or his representatives; unless on the trial of such action, or hearing in equity, the said creditor shall prove fraud in the said assignor with respect to the said general assignment or concealing his estate, real or personal, whether in possession, held in trust or otherwise.

§ 23. The orphans' court may, from time to time, if necessary, by citation and attachment, compel said assignee to proceed to the execution of the duties required by this act, until final settlement and distribution as aforesaid, and to perform, and obey its orders and decrees.

§ 24. Any corporation organized under the laws of this State may make a general assignment under the provisions of this act, and in such case shall be deemed, for the purposes of this act, a resident of the county in which its principal office shall be located, and the orphans' court and the surrogate of such county shall act and have jurisdiction of the proceedings; but in case the said corporation shall, at any time after the making of such general assignment, be adjudged insolvent and a receiver thereof be appointed by the court of chancery of this State, the said court of chancery shall have the power, at any time when it may deem it for the interest of the stockholders or creditors of said corporation, to remove the assignee of such corporation and to direct and compel the said assignee to transfer and convey the trust estate in his hand to such receiver to be administered under the direction of said court of chancery, and the said assignee shall thereupon present his accounts to said court of chancery for settlement and allowance as the said court of chancery may direct; and the said assignee may be made a party defendant in any bill or petition filed in said court of chancery to have such corporation adjudged insolvent and a receiver thereof appointed, and may be restrained, enjoined and removed in such proceeding and subjected to all orders and decrees therein; the said court of chancery may, if it see fit, appoint the said assignee of such corporation the receiver thereof, and in all cases where the said court of chancery shall as aforesaid take control of the trust estate assigned as aforesaid, the jurisdiction of the said orphans' court in the premises shall terminate and the said estate shall be administered as assets of an insolvent corporation in the same manner as if no such general assignment had been made.

§ 25. When such general assignment shall be made by partners in business, the same may include only the partnership property or may also include the several estates of the partners, or any of the partners may, upon such general assignment of the partnership property being made, make also a separate general assignment of his individual estate; in all cases where a general assignment shall include both a partnership and an individual estate the same shall be kept separate in all proceedings under this act, and all notices and accounts in relation thereto shall plainly distinguish between the different estates, and all proceedings, orders and decrees shall recognize the rights and equities of the different classes of creditors, to the end that the property assigned may be equitably applied to the payment of the claims of said creditors; in order to bring a general assignment of partners in business

## Correction of certificate.

within the regulative operation of this act, it shall be sufficient if any one of them resides in this State, in which case the proceedings shall be had in the county where such partner resides, and in case such partners or any of them reside in different counties of this State, then the proceedings may be had in either or any one of such counties, but in such case it shall be the duty of the assignee to cause such proceedings to be had in the county where the principal place of business of said partners is located, if such assignee knows of any such principal place of business and any partner resides in such county.

§ 26. In case after a general assignment shall have been made under the provisions of this act the assignor shall make an agreement of compromise or composition with his creditors, it shall be lawful for the assignee to re-assign and re-convey to said assignor all the trust estate in his hands, free and discharged from the trust, upon compliance with the provisions of this section; in every such case the said assignor shall present a petition to the said orphans' court, duly verified by him, setting forth the said agreement and praying for relief in the premises; and the said court shall thereupon make an order that all the creditors of said assignor shall appear on a certain day therein named and show cause why said agreement should not be confirmed and the said assignee be directed to re-assign and re-convey the trust estate in his hands to the said assignor; the said assignor shall cause said order to be published for three weeks, at least once in every week, in such newspaper or newspapers as the said court may select, and shall also cause a copy thereof to be mailed, at least ten days before the return day of said order, with the postage prepaid, to every creditor of said assignor, addressed to such creditor at his usual post-office address, so far as said assignor can ascertain the same; the said court, on the return day of said order, or on such adjourned day as it may appoint, on being satisfied by affidavit or otherwise that the requirements of this section in relation to the publication of said order to show cause and the mailing of copies thereof have been complied with, and upon being further satisfied that the said agreement had been executed by all the creditors of said assignor entitled to a dividend of the trust estate, shall order upon such terms as it shall deem just, that the said agreement be confirmed and that the said assignee, within such time as said order shall specify, shall reconvey and re-assign to said assignor all the trust estate in the hands of such assignee, in whatsoever form the same may be, and the said order may contain such directions regarding the said reconveyance and reassignment as shall comport with the terms of said agreement.

§ 27. Any person aggrieved by any order

or decree of the orphans' court, or judge thereof, may, under the provisions of this act, appeal from the same to the prerogative court; Provided, That such appeal be demanded within thirty days after such order or decree.

§ 28. All actions at law or suits in equity which may hereafter be brought against any such assignee on account of the taking, appropriating, selling or disposing of any property by such assignee as a part of the trust estate belonging to him under the assignment, shall be commenced within nine months from the time when the cause of action shall arise, and not afterwards.

§ 29. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but this repealer shall not revive any act heretofore repealed; the repeal of any statutory provision by this act shall not affect or impair any act done or right vested or accrued, or any proceeding commenced before such repeal shall take effect; but every such act done or right vested or accrued or proceeding commenced, shall remain in full force and effect to all intents and purposes as if such provision so repealed had remained in force, excepting that all such suits or proceedings now pending under such statutory provisions hereby repealed shall be conducted as near as may be in accordance with the practice and procedure as changed or prescribed by this act.

## CHAPTER 66.

## Correction of Errors in Certificate of Incorporation.

SUPPLEMENTAL to an act entitled "An act concerning corporations." (Revision of one thousand eight hundred and ninety-six.)

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Whenever, in the certificate of incorporation or organization of any corporation organized under any general act of the legislature of this State, there shall be any error or omission in the recital of the act under which said corporation is created, or in the omission of any other matter which is required to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation shall pass a resolution declaring that such error exists and that said corporation desires to correct the same, and shall call a meeting of the stockholders of said corporation to take action upon such resolution; the meeting of said stockholders shall be held upon such notice as the by-laws pro-

## Elections; leases; banking powers.

vide, and in the absence of such provision, then upon ten days' notice given personally or by mail; if two-thirds in interest of all the stockholders shall vote in favor of the correction of such error or omission, a certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of the secretary of State, and upon the filing thereof, the certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this act shall have the same force and effect as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

§ 2. This act shall take effect immediately.  
(Approved March 21, 1899.)

## CHAPTER 120.

## Election of Directors.

[Amends Corporation Act 1896, § 34 (see Anno. Corp. Law, N. J., p. 25.)]

A FURTHER supplement to an act concerning corporations. (Revision of one thousand eight hundred and ninety-six.)

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. The thirty-fourth section of the act to which this is a supplement is hereby amended so that the same shall read as follows:

34. All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation; the poll at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all the stockholders are present in person or by proxy, and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors; Provided, however, That in all corporations formed under the provisions of this act, a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum.

§ 2. This act shall take effect immediately.  
(Approved March 23, 1899.)

## CHAPTER 150.

## Lease of Property and Franchises of Corporations.

## AN ACT concerning corporations.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Any corporation of this State, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease its property and franchises to any corporation, and every corporation of this State is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and that any such lease or assignment, or both, heretofore made, are hereby validated; Provided, however, That nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this State.

§ 2. This act shall take effect immediately.  
(Approved March 24, 1899.)

## CHAPTER 176.

## Banking Powers Prohibited.

[Amends Corp. Act of 1896, §§ 3 and 6. Anno. Corp. Laws, N. J., p. 12.)

A SUPPLEMENT to an act entitled "An act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Section three of the act to which this is a supplement is hereby amended so as to read as follows:

§ 3. No corporation created or to be created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, or of receiving deposits of money, of buying gold or silver bullion or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money.

§ 2. Section six of the act to which this is a supplement is hereby amended so as to read as follows:

§ 6. Upon executing, recording and filing a certificate pursuant to all the provisions of this act three or more persons may become a corporation for any lawful purpose

## Winding up voluntary associations.

or purposes whatever other than a saving bank, a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company or other company which shall need to possess the right of taking and condemning lands in this State, or other than a corporation provided for by "An act concerning banks and banking" (Revision of 1899), or by "An act concerning trust companies" (Revision of 1899), or by "An act concerning safe deposit companies" (Revision of 1899); it shall, however, be lawful to form a company hereunder for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside of this State.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect immediately.

(Approved March 24, 1899.)

## CHAPTER 182.

## Winding up Voluntary Associations and Associations with Partnership Liabilities.

## AN ACT for winding up voluntary associations and associations with partnership liabilities.

Whereas, Many associations have been and are carrying on business with partnership liabilities, where the membership is so large and secret that actions at law cannot be safely brought against them, and when becoming insolvent the remedy at law is so uncertain and hazardous as to amount to a failure of justice for want of an adequate remedy; therefore,

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Whenever any voluntary association now or heretofore carrying on business with partnership liabilities, are or shall become insolvent, or have suspended or shall suspend its ordinary business for want of funds to carry on the same, it shall and may be lawful for any creditor or member of such association to apply by petition or bill to the chancellor, setting forth the fact and circumstances of the case, for a writ of injunction and the appointment of a receiver or receivers or trustees for the winding up of the business and payment of the debts of such association; whereupon the chancellor being satisfied of the sufficiency of said application and also of the truth of the facts and allegations contained in said petition or bill by affidavit or otherwise, he may proceed in the manner provided for winding up insolvent corporations in the act entitled "An act concerning corporations" (Revision). approved April seventh one thousand

plements thereto, so far as they are applicable.

§ 2. Upon the filing of such petition or bill as above provided process of subpoena shall issue directed to the trustees or managers of such association as in other cases, who are hereby required and made their duty on penalty of being proceeded against as for contempt, to file with the clerk of the court of chancery a duly verified statement containing the names of all the members of such association, with their several places of residence, within ten days from the return day mentioned in such subpoena.

§ 3. After the filing of such list the chancellor, upon application of the petitioner or complainant, shall make an order for all such members named in such list to show cause on a certain day therein named, not less than thirty nor more than sixty days thereafter, why the prayer of the petitioner or complainant should not be granted, which order shall state the object or purpose of the petition or bill, and a copy thereof, which need not be certified, shall be served by the petitioner or complainant upon each member of said association, either personally or by leaving such copy at his usual place of abode with some person resident there, over the age of fourteen years, and within ten days from the date thereof.

§ 4. Upon the return day of such order or rule to show cause, any member or members desiring to contest the facts set forth in such petition or bill shall file his, her or their answer thereto, and proceed to a hearing as in other causes in said court; and that upon due proof being made of the service of said order in conformity with this act upon such members of said association as shall not appear and file their answer to the said petition or bill, a decree pro confesso may be entered against them as in other causes, unless the chancellor shall, on good cause shown, grant further time in which to answer.

§ 5. The receiver or receivers or other officer appointed in such cause shall give such notice as the chancellor may direct to the creditors of such association, requiring them to file with him any claim they may have against such association, within such time as the chancellor may direct, or be barred from all relief under such proceeding for winding it up; and the receiver shall, within ten days from the time so limited in said order for presenting claims, make his report to the chancellor of all claims filed, and also of the assets of said association, which shall be open for inspection and exception by any member of such association for ten days, when, if no exception is filed thereto, the same shall stand as reported; and in case of exception thereto, the chancellor may hear and determine the same, or direct that suit be commenced .

## Elections; decisions.

which the exceptant shall be at liberty to contest, in the receiver's name, and in case of failure shall pay the costs thereof.

§ 6. If it shall appear by the report filed by the receiver that the assets of the association are insufficient to pay its debts and the expenses attending the winding up of the same, the chancellor may assess against each member thereof a sum to be paid by him or her to the receiver in liquidation of such indebtedness; and in making the same he shall have power to inquire into the solvency or ability of the members to pay such assessment, in order to assess sufficient moneys to pay all the claims; and on failure to assess sufficient at one time, he may assess enough from time to time until sufficient moneys are raised to satisfy all claims.

§ 7. Such receiver is hereby authorized and empowered to maintain in his own name as receiver, suit or suits in any of the courts of this State having jurisdiction thereof, against any member of said association for collection of the amount so assessed against him; and in case more money shall be realized than shall be sufficient for the purposes aforesaid, so that on final settlement of the receiver's account moneys shall appear in his hands unexpended, the same shall be repaid pro rata to those who shall have contributed the same.

§ 8. Upon the settlement of the receiver's accounts and the payment of the debts of such association, the same shall be dissolved.

§ 9. This act shall apply to all associations whose debts are unpaid and whose business is unsettled, and shall take effect immediately.

(Passed March 24, 1899.)

## CHAPTER 213.

## Investigation of Corporate Elections.

A SUPPLEMENT to an act entitled "An act concerning corporations" (Revision of one thousand eight hundred and ninety-six), approved April twenty-first, one thousand eight hundred and ninety-six.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

Section 1. Any person who may be aggrieved by or complain of any election for directors, or any proceeding, act or matter in or touching the same, may make application by petition to the chancellor, who, after requiring reasonable notice to be given to the adverse party or to those who are to be affected thereby, shall proceed forthwith and in a summary way to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order and give such relief in the premises as right and justice may require.

§ 2. Pending the hearing and determination of any application to investigate an election of directors the chancellor may by order restrain the persons claiming to have been elected to the office of director from exercising any of the functions and duties of the office.

§ 3. This act shall take effect immediately.  
(Approved March 24, 1899.)

## DECISIONS.

(Include 44 Atl. Rep., p. 144.)

## Certificate of incorporation; effect of, on action of stockholders.

The simple statement, in affirmative language, of the matters required by section 11 of the New Jersey Act, concerning corporations (act of 1875), to be contained in the certificate of incorporation of a company does not amount to such a limitation upon the future action of its stockholders as will prevent a change in the purposes of the corporation by the consent of two-thirds in interest of its stockholders, under section 33 of the same act.

The certificate of a corporation organized in 1880 stated that the business of selling its manufactured product out of the State of New Jersey was to be carried on in the city of New York. Its property consisted of mines and mining rights in Sussex county,

N. J., and a plant for reducing the ores therefrom in Essex county, N. J. In 1897 it became necessary for it to purchase mines adjoining and mining rights conflicting with its own, and with them to purchase a reducing plant out of the State of the same character as that owned by it in the State. This additional plant was found to be necessary in order to reduce the increased product due to the same purchaser, and its ore was highly profitable. It was held that the ore of such plant out of the State was not, under the circumstances, a breach of the contract between the stockholders, as found in the original certificate; but if it was, that it could be sanctioned by the assent of two-thirds in value of the stockholders, under section 33 of the act of 1875. *Meredith v. New Jersey Zinc & Iron Co.*, 44 Atl. Rep. 55.

## Decisions.

**Amendment of charter by legislature.**

Act of February 14, 1846, § 6, providing that charters of corporations thereafter granted shall be subject to alteration, suspension and repeal, relates only to those matters which concern the public, and does not reserve power to the legislature to change the rights of corporators as between themselves, and the legislature has no right to change the number of votes to which each stockholder is entitled by the charter. In re Election of Directors of Newark Library Assn., 43 Atl. Rep. 435.

**Extension of corporate existence.**

The period of corporate existence is a matter which *prima facie* concerns the State only, and the limitation to a definite period is an exercise of control in the interest of the public. Stockholders may, perhaps, under the laws which authorize special restrictions in charters, exclude the power of continuing corporate existence beyond a fixed period; but unless this power is excluded, the corporation may, as between itself and the stockholders, extend its corporate existence under the laws, for that purpose, which existed at the time of the incorporation, provided these laws still remain in force at the time of the proceedings for continuance, or under subsequent laws, by which the State, in its control over corporations, restricts, rather than enlarges, the power of continuing the existence. *Smith v. Eastwood Wire Mfg. Co.*, 43 Atl. Rep. 567.

**Purchase of shares by corporation.**

Under the Corporation Act of 1896 there is an implied grant of power to corporations to purchase shares of their own capital stock, whenever such purchase is required for legitimate corporate purposes. *Chapman v. Iron Clad Rheostat Co.*, 41 Atl. Rep. 690.

**Pleading ultra vires.**

Where a person contracting with a corporation has fully performed his part of the contract, and cannot be restored to his former status, or be honestly dealt with otherwise than by holding the corporation to performance of its share of the bargain, the plea of *ultra vires* by the corporation is inadmissible. *Chapman v. Iron Clad Reostat Co.*, 41 Atl. Rep. 690.

**Signature of corporation to petition for public improvement; ratification.**

Where the name and title of a corporation owning lands fronting upon a public street, to be laid out or improved under a statute which requires the owners of a certain proportion of lineal feet to assent to such improvement by petition, to which the signatures of the owners of such proportion of lineal feet must be annexed, is signed to such petition, the assent of such corporation to such petition and the authority

signature will be presumed; and if any third party assails the same, as prosecutor in *ceteriorari*, to review the proceedings, the burden will be upon him to establish the fact that such corporation did not assent, and that the signature of the corporation to the petition was unauthorized. A ratification of such assent and signature by the corporation would estop the corporation from objecting because of want of authority to attach the signature. Such ratification would also estop the right of third parties to object. The ratification relates back to the time of the original assent and signature to such petition, and renders them as effectual as if the authority, in the first instance, had been expressly conferred. *State v. Mayor, etc., of Borough of Fairview*, 43 Atl. Rep. 578.

**Expulsion of members.**

The by-laws of a fire and hook and ladder company provided that any member guilty of an act whereby the reputation of the company might be injured, witnessed by any member of such company, might be punished by expulsion. It was held that provision only involves a liability of a member to expulsion when the act of the member was one of moral turpitude, an act of cowardice or neglect in the performance of the active duties devolving on such member, or some criminal act, and does not involve a member in liability to expulsion, because of business transactions of a financial character between the member and the company, whatever may be the difficulties arising out of the transactions. Such difficulties must be settled by amicable adjustment, or by an action or suit in a court of competent jurisdiction, and not by expelling the member, and thus depriving him of his rights as a member of the company. *De Hart v. Goodwill Hook & Ladder Co.*, 40 Atl. Rep. 570.

**Default of taxes by corporation; appointment of receiver.**

A corporation which has defaulted in the payment of State taxes and has been proclaimed by the governor, under the provisions of the Corporation Act of 1896, is within the provisions of that act, for winding up corporations. (Act of 1896, §§ 53-60; Anno. Corp. Laws, N. J., pp. 31-33.) Upon application by a creditor or a stockholder of such corporation, under section 56 of such act (Anno. Corp. Laws, N. J., p. 32), the discretionary power of the chancellor is invoked, and should be exercised either to continue the directors or trustees to settle the corporate affairs, under such section, or to appoint a receiver for that purpose. Discretion to appoint a receiver should not be disclaimed because of failure of proof of breaches of trust by the directors, since the governor's proclamation, but should be exercised upon proof of such breaches of trust.

## Decisions.

duct, or incapacity evincing the unfitness of the directors to properly discharge the duties of such trust. American Surety Co. v. Great White Spirit Co., 43 Atl. Rep. 579.

**Preferred stock, rights of holders; effect of amendment of articles.**

P. L. 1889, p. 412 (Corp. Act, 1896, § 18) authorizes corporations to issue common and preferred stock and provides that the holders of the latter shall be entitled to receive a fixed yearly dividend, to be expressed in the certificate. Pursuant to its certificate of incorporation, which authorized it to issue preferred stock entitled to a certain dividend, if earned, without reservation of any right of the stockholders to modify such provisions, a corporation issued certificates of preferred stock, entitling the holders to the dividends named in the certificate of incorporation, without reservation. It was held that the certificate of incorporation constituted a contract between the stockholders, and the certificate of shares a contract between the stockholders and the company, entitling the holder to the dividend named in the certificate, which could not be reduced without his consent. Pronik v. Spirits Distributing Co., 42 Atl. Rep. 586.

P. L. 1893, p. 444, § 6 (Corp. Act, 1896, § 27), authorizing a corporation, with the assent of a majority in interest of its stockholders, to amend its certificate of incorporation, as of date of the recording and filing of the original, does not authorize a corporation to reduce the rate of dividend expressed in a preferred stock certificate, where the company reserved no power, either in its certificate of incorporation or the certificate of stock to change such rate, since such alteration would impair the obligation of the contract with the stockholder. *Id.*

**Injunction to restrain amendment.**

Where a corporation made an agreement with another by which the former was to reduce the dividend payable on its preferred stock, and the latter was to pay such reduced dividend direct to the stockholders, the alteration of the certificate of incorporation of the former so as to provide for such reduced dividend, will be enjoined at the instance of a non-assenting holder of preferred stock, since his legal remedy would be inadequate. *Id.*

**Dividends on corporate stock.**

A dividend on corporate stock, declared after the right to the income has been severed from the ultimate ownership of the stock, belongs to the person entitled to the income so far, and only so far, as it is derived from the earnings of the stock after such severance. The presumption is that the earnings have been made at a uniform rate, day by day, since the last dividend, and a dividend out of earnings should be distributed between the capital and income of a trust on

that basis; but this presumption is subject to be rebutted by proof that the earnings were really made differently. In the absence of contrary notice from the parties in interest or by circumstances, a trustee holding corporate stock may safely act on such presumption, and also on the presumption that any dividend paid him is out of earnings. *Lang v. Lang's Exec.*, 41 Atl. Rep. 405.

**Election of directors.**

At an election of directors for a corporation, two sets of directors were elected, one by persons shown by the original stock-book ledger and transfer-book of the company to be the owners of a majority of the stock, and the other set by persons shown by such books to own only a minority of the stock, but by another stock-book, specially prepared for the election, shown to own a majority of the stock. It was held that the directors elected by the persons shown by the original books to own a majority of the stock were the directors under Corporation Act, 1896, §§ 33, 40 (Anno. Corp. L. N. J., pp. 24, 26), providing that the stock-books of a corporation, and, in case of a discrepancy between them, the transfer-book shall determine who are stockholders entitled to vote for directors. *In re Election of Directors Com. Tel. & Telegraph Co.*, 43 Atl. Rep. 433.

**Directors; increase in number; meeting of stockholders.**

The stockholders of a corporation may, at a special meeting called for that purpose, increase the number of directors by an amendment to the by-laws, taking immediate effect. In the absence of other provisions in the by-laws, it will then be the right and duty of the stockholders to elect the additional directors. The provisions of section 15 of the Corporation Act of 1896 (Anno. Corp. L. N. J., p. 17), relating to the filling of vacancies by the board of directors, have no application to such a case. In the absence of other provision in the by-laws, such an election should be held at a meeting subsequently called, with due regard to sections 33 and 36 of the act above referred to. (Anno. Corp. L. N. J., pp. 24, 25.) *In re A. A. Griffing Iron Co.*, 41 Atl. Rep. 931.

A special meeting of the stockholders of a corporation was duly called on less than ten days' notice, to amend the by-laws of the company by increasing the number of directors, and to elect those that should be added. At the meeting every share of stock in the corporation was represented and voted on, and the by-laws were so amended. The additional directors were then chosen by the votes of a majority in number and interest of all the stockholders, the minority stockholders refusing to vote. No stock had been transferred within twenty days prior to the meeting. It was held, on summary inquiry

## Decisions.

under section 42 of the Corporation Act (Anno. Corp. L., N. J., p. 27), that notwithstanding its informality, such election would not be disturbed. *Id.*

**Liability of treasurer of corporation.**

The treasurer of a corporation, who, with the corporation's consent, deposits its funds in a bank to his credit as treasurer, is entitled to allowance for so much of the deposit as was lost by the failure of the bank, in accounting with the company. The treasurer of a company is not chargeable with interest on the funds of the company in his hands, unless it is shown that he used them for his own purpose, or that he used them or ought to have used them in such a way as to earn interest. *Fougeray v. Laurel Springs Land Co.*, 41 Atl. Rep. 694.

**Fraud of directors in sale of land.**

A bill charged fraud in a conveyance of land by a hotel company to a land company, claiming that directors of the hotel company were interested in the purchase by the land company, and a purchase by the hotel company of land in which some of the directors were interested. The proof showed that after the property had been bargained for, a stockholder of the hotel company joined in the formation of the land company; that a director in the hotel company, and one of the committee to sell, was a partner of a party who induced certain persons to form the land company; that only one of the directors of the hotel company had any interest in the land sold to the company, and he did not know that the purchase was being made for the hotel company. It was held that the proof was insufficient to sustain the allegation. *Freeman v. Sea View Hotel Co.*, 40 Atl. Rep. 218.

**Liability of directors of insolvent corporation.**

Directors of a corporation are liable to creditors for negligence occurring while the company is insolvent. Where a receiver of a corporation is discharged in consequence of an agreement of creditors to extend payment of their claims, and the business is continued, the condition is one of insolvency, so as to render the directors so liable. *Bird v. Magowan*, 43 Atl. Rep. 278.

The bookkeeper of such an insolvent corporation, being also nominally a director, and acting under the president's direction, drew checks as treasurer in the president's behalf, and without knowing for what purposes the money was to be used. The checks were for round sums and were charged to a special account kept with the president, who made no objection but stated on the trial that the money was used to pay the debts of the company. It was held that the bookkeeper, as director, was liable to the creditors for the amount of the checks, as was also another director who acted as the

tendent of the company, although he had no actual knowledge of the drawing of such checks. *Id.*

**Insolvency proceedings; rights of creditors.**

That a creditor of an insolvent corporation, not about to resume its business with safety to the public and advantage to the stockholders, institutes proceedings to have the insolvency, etc., adjudged and a receiver appointed, with ulterior purpose of self-advantage, will not defeat the proceedings. One who holds legal title to and a beneficial interest in a debt due from an insolvent corporation is a creditor, within the meaning of the statute, and is capable of instituting and prosecuting proceedings in insolvency. *Ft. Wayne Electric Corp. v. Franklin Electric Light Co.*, 41 Atl. Rep. 666.

**Insolvent corporation; time to present claims.**

Where a creditor of an insolvent corporation fails to present his claim to its receiver within the time limited, and the claim will apparently result in protracted litigation and long delay in settlement of the estate, and the interests of the creditors whose claims on the assets have been established, and who are entitled to a settlement of the estate, would be prejudiced by the delay, an extension of time for the filing of the claim will not be granted. Under Corporation Act of 1896, § 76 (Anno. Corp. L., N. J., p. 38), requiring that every claim against an insolvent corporation must be presented to the receiver, so that he may pass on it, a claim cannot be allowed on application for the extension of the time for filing it with the receiver. *Blake v. Domestic Mfg. Co.*, 41 Atl. Rep. 376.

**Preferences by insolvent corporations.**

Where a director, who was a controlling stockholder, obtained a judgment against his corporation, and by a levy secured a lien on practically all of the assets for the purpose of preferring himself to other creditors, when the corporation was insolvent, it was a violation of his duty as trustee of corporate funds for the creditors, and his assignee pendente lite with notice, may be required to pay the proceeds over for distribution covering all the creditors. On a bill charging that conveyances by a corporation to its controlling director two months before it became insolvent were voluntary and in fraud of creditors, they will not be set aside as an inequitable preference, where the proof was that they were made in satisfaction of an existing debt, and where all the claims proved before the receiver were subsequent ones. *Tennant v. Appleby*, 41 Atl. Rep. 110.

**Insolvency; preferred claims of laborers.**

The Corporation Act, § 63 (Revision of 1896, § 83; Anno. Corp. L., N. J.,

## Decisions.

of a corporation, the laborers in the employ thereof shall have a preferred lien "for the amount of the wages due them respectively." Such section refers exclusively to natural persons only, as have done labor, work or service for a corporation which stands to them in the relationship of master or principal. It will not permit a preference to a corporation which has performed services for the insolvent corporation under a contract, by its own servants and employees. The provision is in terms limited to those who have earned "wages." It cannot be said that a corporation performing such services for another, comes within this limitation. *In re Barr-Dinwiddie Printing & Book-binding Co.*, 42 Atl. Rep. 575.

**Insolvency; illegal mortgage.**

A mortgage of corporation property, executed by the president without the knowledge of the directors, and ratified by the resolution of such directors after the corporation had become insolvent and suspended business, and with the knowledge of the mortgagee of such insolvency and suspension, is invalid as against a receiver in insolvency, under Corporation Act of 1896, section 64 (Anno. Corp. L., N. J., p. 34), which declares void all transfers of property made by a corporation after insolvency or suspension of its ordinary business, where the transferee had notice of the insolvency or suspension. *Howell v. Keen*, 43 Atl. Rep. 1070.

**Insolvency; franchise tax levied after appointment of receiver.**

A franchise tax imposed on an insolvent corporation under P. L. 1892, p. 140, § 5 (Anno. Corp. L., N. J., p. 52), after the appointment of a receiver, is not an indebtedness entitled to share in the receiver's distribution, in view of Corporation Act (1896), §§ 74, 75, 83, 86 (Anno. Corp. L., N. J., pp. 38, 39), contemplating that all indebtedness payable from such distribution should exist when the insolvency is adjudicated. A franchise tax, so imposed, is not payable from the assets as an expense of the receiver, when the assets are insufficient to pay creditors, to whom the franchise is worthless, though Corporation Act of 1896, § 68 (Anno. Corp. L., N. J., p. 37), gives a receiver the franchise of an insolvent corporation. *Crews v. United States Car Co.*, 42 Atl. Rep. 272.

**Insolvency; assessment on stockholders.**

Where a corporation is insolvent, and its business is ended, the subscribers for or holders of its unpaid stock are assessable for only so much of what is unpaid on the stock as will satisfy the claims of corporate creditors, and meet the expenses of winding its affairs. An order for such an assessment may be made by the court of chancery in the suit wherein the corporation was adjudged to be insolvent, and when so made

its propriety cannot be questioned in suits brought against the stockholders for its enforcement. Such an order is the result of an exercise of judicial power, and, therefore, should be made only after a reasonable opportunity has been afforded to the stockholders to be heard on the matter. *Cumberland Lumber Co. v. Clinton Hill Lumber Co.*, 42 Atl. Rep. 585.

**Injunction; appointment of receiver.**

Stockholders of a solvent corporation, owning equally its stock, dissented as to its management, and one set sought to restrain the other from controlling its affairs. The latter applied for a receiver pending the suit. The business of the corporation was not interfered with by the litigation, but the receivership would have depreciated outstanding claims and affected the company's credit. It was held that the application must be denied, since the court's power to preserve corporate property by a receiver pendente lite will not be exercised where it will not serve the stockholders beneficially. An injunction will not lie to restrain an officer of a corporation, pending a suit among its stockholders, from signing notes and checks for it, when he is neither exercising any duties not imposed on him, nor exceeding his authority under the company's by-laws. *Sternberg v. Wolff*, 42 Atl. Rep. 1078.

**Foreign corporation; what constitutes transaction of business.**

Under the General Corporation Act of 1896, §§ 97, 98, 101 (Anno. Corp. L., N. J., pp. 43, 44), a foreign corporation which makes a single sale of its product and accepts a guaranty of payment in New Jersey, does not transact business within the statute. The statute does not apply where a foreign corporation refuses to fill an order for goods given it by a resident of New Jersey, except on receiving a guaranty of payment, and the guaranty is executed in the State, and mailed to the corporation at its home office, and it thereupon fills the order, since the contract is not concluded in New Jersey. *Delaware & H. C. Co. v. Mahlenback*, 43 Atl. Rep. 978.

**Foreign corporation; right to hold mortgages on real property.**

A bond and mortgage on lands in the State, executed in favor of a building and loan association of another State, by a member thereof, are contracts made and to be performed in such other State. In view of the statutes allowing foreign corporations to hold mortgages on land in the State, a corporation holding such a mortgage may recover the amount due, though it has not filed the certificate of incorporation with the secretary of State, required of all corporations doing business in the State by Corporation Act, 1896, § 97 (Anno. Corp. L., N. J., p. 43). *Idem*.





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**NEW YORK.**

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# NEW YORK.

(Decisions include 159 N. Y., 42 App. Div. 128, Misc. Rep. 528.)

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## PART I.

### THE GENERAL CORPORATION LAW.

Note. The laws and decisions in this State, enacted or rendered since the publication of Annotated Corporations Laws of all the States, are arranged under the same part divisions. If a section has been amended it is inserted as amended. If a decision has been rendered under a particular section the number of the section, with its title is inserted, and the decision cited thereto.

#### § 4. Promoters.

It is only where the promoter informs every subscriber, or the director informs every fellow director and stockholder that he is personally interested, and of the amount of profit he expects to make on sale to the corporation, that the promoter or director will be permitted to make or retain a profit on such a sale. Otherwise, he may be compelled to account to the corporation. Colton Improvement Co. v. Richter, 26 Misc. Rep. 28 (1899), and cases cited.

#### § 10. Limitation of powers.

A corporation has no power to indorse for accommodation. A. D. Farmer & Son Co. v. Humboldt Publishing Co., 27 Misc. Rep. 314 (1899).

#### § 15. Certificate of authority of foreign corporation.

This section does not preclude a foreign corporation which has not obtained a certificate from maintaining an action in this State upon a contract made prior to May 18, 1892, the date of the passage of the General Corporation Law. Atlantic Constitution Co. v. Krensler, 40 App. Div. 268 (1899).

#### § 27. Elections.

The Supreme Court may annul the election of an ineligible trustee, in an action by the attorney-general under section 1948 of the Code of Civil | (1899).

Procedure. Matter of Northern Dispensary, 26 Misc. Rep. 147 (1899).

The validity of the election of the officers of a foreign corporation will not be determined in this State on a motion for a temporary injunction restraining them from acting as such officers. Washington Lighting Co. v. Dimmick, 41 App. Div. 596 (1899).

#### § 28. Collusive actions.

Where a collusive default to an action brought against a corporation is arranged by the directors, a stockholder may come in and defend the action in behalf of the corporation, and by an attorney of his own selection. Matter of Virgel, 26 Misc. Rep. 320 (1899).

#### § 29. Powers and duties of directors.

Directors have no right to vote themselves salaries as mere incidents to their offices. They may, however, become employees of the corporation and as such receive reasonable compensation. Fitchett v. Murphy, 26 Misc. Rep. 544 (1899).

A stockholder cannot enjoin the execution of a contract made by his corporation with another corporation, within the corporate powers and free from fraud, on the sole ground that the promoters of the contract were directors in both corporations. Burden v. Burden, 159 N. Y. 287 (1899).

The directors cannot by a lease of corporate property for five years, practically abandon the enterprise for which the corporation was organized. Hennessy v. Muhleman, 27 Misc. Rep. 232

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Directors; officers.

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## PART II.

### THE STOCK CORPORATION LAW.

#### § 2. Power to borrow money and mortgage property.

Where a mortgage of all its property, including its plant, made by a corporation to secure the payment of the principal and interest of its bonds, in terms purports to include future earnings and products, and provides that until default the mortgagor shall have the use of the earnings in the conduct of its business, and that upon default the mortgage trustee may go into possession, exercise the corporate franchises and appropriate the earnings to the payment of the mortgage debt, the mortgage does not, as against general creditors of the corporation, operate as a lien upon earnings until actual entry and possession under it. N. Y. Security Co. v. Saratoga Gas & Electric Co., 159 N. Y. 137; 53 N. E. Rep. 758 (1899); reversing 30 App. Div. 89.

As between the general creditors of the corporation and its bondholders under such a mortgage purporting to include future earnings and products, the right or lien of the bondholders is properly limited to the earnings of the corporate business, in the sale of its products, after the mortgage trustee or a receiver in foreclosure has actually taken possession; and the earnings prior to that time belong in equity to the general creditors. *Id.*

#### § 20. Directors.

The provision of this section that "If a director shall cease to be a stockholder, his office shall become vacant" is self-executing. *Sinclair v. Fuller*, 158 N. Y. 607; 53 N. E. Rep. 610 (1899).

#### § 26. Transfer of stock by stockholders indebted to the corporation.

Unless a copy of this section is written or printed on the certificate, the stockholder transfers his liability upon the transfer of his stock, for all calls made subsequent to the transfer. *Rochester & Kettle Falls Land Co. v. Raymond*, 158 N. Y. 576; 53 N. E. Rep. 507 (1899).

#### § 27. Officers.

Directors have no right to vote themselves salaries as mere incidents to their offices. They are not, however, debarred from becoming employees of the corporation, and are entitled to a reasonable compensation as such. *Fitchett v. Murphy*, 26 Misc. 544 (1899).

Where a contract is made by an officer in excess of his authority, if the corporation accepts the avails, it is deemed to have ratified the act of its officer and is estopped from repudiating it. *White v. Sheppard*, 41 App. Div. 113 (1899).

The authority of the president of a corporation to bind the corporation by acts within the scope of his apparent authority may be implied from the adoption or recognition of his acts by the corporation or its directors. *Hall v. Ochs*, 34 App. Div. 103 (1898).

#### § 29. Books.

A stockholder has a common-law right, enforceable by mandamus, to inspect the books of the corporation. The right exists irrespective of statute. *Matter of Steinway*, 159 N. Y. 250; 53 N. E. Rep. 1103 (1899); affirming 31 App. Div. 70.

The president of a corporation is entitled as a matter of right to inspect the stock-book, and to make extracts therefrom; his motives are immu-

terial. *People ex rel. Gunst v. Goldstein*, 37 App. Div. 550 (1899).

#### § 30. Annual report.

The liability under this section is limited to debts contracted while the director continues in office, and does not include a debt incurred after he has ceased to be a director, although the default continues. *Sinclair v. Fuller*, 158 N. Y. 607; 53 N. E. Rep. 610 (1899).

An annual report made on January 13th "for the year ending December 31st, preceding," complies with the requirement that the report be made "as of the 1st day of January." *American Grocery Co. v. Platt*, 36 App. Div. 152 (1899).

Where a corporation indorses a note, and it is sought to charge the directors with liability thereon for failure to file an annual report, the plaintiff may show that the corporation was the principal debtor, in order to prevent the directors escaping liability on the ground that the note had not been protested, and the liability of the corporation fixed, before the filing of the report. *Witherow v. Slayback*, 158 N. Y. 650; 53 N. E. Rep. 681 (1899).

A bond executed in 1895 and payable in 1900, secured by a mortgage on its real estate, is, in January, 1896, an existing debt. *Lee v. Jacobs*, 38 App. Div. 531 (1899). The abandonment of the business after the default in filing occurs does not operate to relieve directors from liability. *Id.*

As to what constitutes sufficient proof that a defendant was a director at the time of failure to file annual report, see *Bank of Metropolis v. Faber*, 38 App. Div. 159 (1899).

#### Limitation on liability of directors.

§ 34. No director or officer of any stock corporation shall be liable to any creditor of the corporation, because of the creation of any excessive indebtedness, or because of any failure to make or to file an annual report, whether heretofore or hereafter occurring;

(1) In case of any debt, as to which personal liability of directors or officers may be or shall have been waived by such creditor, or by anyone under whom he claims; or by any provision of any instrument creating or securing such debt; or

(2) Unless within three years after the occurrence of the act or the default in respect of which it shall be sought to charge the director or officer, such creditor shall have served upon such director or officer written notice of his intention to hold him personally liable for his claim; provided, nevertheless, that any such liability, because of any such default now existing and not waived as above provided, may be enforced by action begun at any time within the year eighteen hundred and ninety-nine or by action begun thereafter, if within such year written notice of intention to enforce such liability shall have been given as above provided.

## Stock.

Any director or officer, who, because of any such existing or future liability, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporate property, but not against the stockholders of the corporation; and also shall be entitled to contribution from all other directors and officers of the corporation similarly liable for the same debt, and the personal representatives of any such director or officer who shall have died before making such contribution. (Added by L. 1899, ch. 354.)

**§ 40. Issue and transfer of stock.**

A corporation may purchase the stock and bonds of a rival company and issue its own stock and bonds in payment. *Rafferty v. Buffalo City Gas Co.*, 37 App. Div. 618 (1899).

In absence of special agreement or statutory requirement, a subscriber to the stock of a corporation does not agree to pay the par value, and a transfer in good faith transfers his rights and liabilities. Especially is this so, if the corporation has ratified the transfer. *Rochester & Kettle Falls Land Co. v. Raymond*, 158 N. Y. 576; 53 N. E. Rep. 507 (1899).

An issue of certificates of stock by a business corporation bearing on their face the words: "Shares \$100 each. Full-paid and non-assessable beyond \$10 per annum," prevents the corporation from subsequently assessing the shares. *Sullivan County Club v. Butler*, 26 Misc. Rep. 306 (1899).

**§ 42. Consideration for issue of stock and bonds.**

An issue of stock to a promoter is not an issue for cash or property. *Herbert v. Duryea*, 34 App. Div. 478 (1898).

The issue of stock and bonds in payment for the stock and bonds of a rival company to prevent ruinous competition is a "lawful purpose" under this section. *Rafferty v. Buffalo City Gas Co.*, 37 App. Div. 618 (1899).

Coupons are to be considered as a part of the bond and partake of its character. They are governed by the same statute of limitation as applies to the bond. *McClelland v. Norfolk Southern R. R. Co.*, 110 N. Y. 475; 18 N. E. Rep. 237; *Kelly v. Forty-second St. R. R. Co.*, 37 App. Div. 500 (1899).

**Increase or reduction of capital stock.**

**§ 44.** Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by law. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A

domestic railroad corporation may increase or reduce its capital stock in the manner herein provided notwithstanding any provision contained herein or in any general or special law fixing or limiting the amount of capital stock which may be issued by it. (Thus amended by L. 1899, ch. 696.)

[The amendment consists of the last sentence.]

**§ 48. Prohibited transfers.**

[The fact that a judgment creditor institutes an action to set aside a preferential transfer of corporate property does not entitle him to priority over other creditors, upon his obtaining a judgment setting aside such transfer. *Lodi Chemical Co. v. National Lead Co.*, 41 App. Div. 535 (1899).]

The failure of a receiver of a corporation to publish the statutory notice, requiring all persons having property of the corporation in their possession, to deliver it to him, does not preclude him from recovering preferential payments made under this section. *Stieffel v. New York Novelty Co.*, 25 Misc. Rep. 221 (1898).

Directors, who in aid of a believed temporary embarrassment, loan money to a corporation, without knowledge of its hopeless insolvency, and who receive securities for the loan, pursuant to a resolution of the board of directors, are entitled to retain them against a subsequent receiver of the corporation. This was held in the case of a foreign corporation, *Converse v. Sharp*, 37 App. Div. 399 (1899).

The giving of a demand note by the officers of the corporation in payment of a prior debt, with the understanding that in an action thereon, the corporation would default, together with an understanding that the particular creditor should have a preference, is suffering a judgment within the meaning of this section. *Lodi Chemical Co. v. Pleasants et al.*, 25 Misc. Rep. 97 (1898).

Where the president of a corporation consents that a debt due to him be divided into several notes, each of which are within the jurisdiction of the City Court of New York, to the end that a foreign assignee of the notes might obtain summonses in that court returnable in two days, and after their service conceals the fact and refrains from putting the corporation in the hands of a receiver until judgment has been obtained and execution levied, the judgments are void under this section which prohibits an insolvent corporation from making transfers with a preferential intent. *Rossman v. Seaver*, 22 Misc. Rep. 661 (1898); affirmed, 41 App. Div. 604 (1899).

This section is not limited in its application to the corporation or its officers or directors, acting as such officially, but applies to individuals who stand in the relationship mentioned to the corporation; and the unofficial act of a director effecting a transfer of the corporate property in violation of the statute, is void. *O'Brien v. East River Bridge Co.*, 36 App. Div. 17 (1898). The second prohibition of this section is not confined to a corporation which has refused to pay its notes or obligations when due, notwithstanding the use of the terms "such corporation." Id.

This section does not prohibit the assignment by an officer or stockholder, of a claim he may have against the corporation, to secure or pay his bona fide creditors, where the transaction was in good faith. The right is not affected by reason of the fact that the parties to the assignment are husband and wife. The assignee may enforce the claim against the corporation by pursuing the usual and ordinary remedies, and the judgment does not constitute an illegal preference. *Jefferson County Bank v. Townley*, 159 N. Y. 490 (1899); reversing 92 Hun, 172.

The provisions of this section forbidding a stockholder to make any transfer or assignment of its stock in contemplation of its insolvency, makes such a transfer void as to the persons injured by the transfer, but where there is no fraud as between the transferor and the transferee, nor as against the corporation assenting to the transfer,

## Stockholder's liability.

It is valid; the purpose of the prohibition being to prevent solvent shareholders from escaping from their statutory liability to those who were creditors of the corporation when the transfer was made, and further to prevent them from escaping from their contractual liability to a corporation not assenting to the transfer. *Sinclair v. Dwight*, 9 App. Div. 297 (1896); affirmed, 158 N. Y. 607; 53 N. E. Rep. 510 (1899).

The provision of this section, that no officer, director or stockholder of a corporation shall make any transfer or assignment of its property to any person in contemplation of its insolvency, applies to such a transfer or assignment made by the corporation itself. *Munson v. Genesee Iron & Brass Works*, 37 App. Div. 203 (1899).

An assignment for the benefit of creditors of property, within the State, executed by a foreign corporation doing business here, is subject to the provisions of the General Assignment Law, which provides that preferences contained in a general assignment shall be valid only to the extent of one-third in value of the estate. *Matter of Halsted*, 42 App. Div. 101 (1899).

An assignment with preferences made by a foreign corporation upheld, and the receiver of a corporation in this State directed to pay over to the assignee of such foreign corporation the amount of a debt due from the corporation of which he was receiver. *Matter of Hulbert Bros. & Co.*, 38

App. Div. 823 (1899). Section 48 of the State Corporation Law not applicable to foreign corporations. *Id.*

Section construed. *Hilton v. Ernst*, 38 App. Div. 94 (1899).]

## § 54. Liability of stockholders.

[A stockholder's contractual liability to the corporation may be enforced in this State by the foreign assignee of a foreign corporation. *Stoddard v. Lum*, 159 N. Y. 265; 53 N. E. Rep. 1108 (1899), reversing 32 App. Div. 565.

An action under this section is maintainable by a single creditor, without joining the other creditors of the corporation. *Citizens' Bank of Buffalo v. Weinberg*, 26 Misc. Rep. 518 (1899).

An attorney, regularly employed at a fixed salary, is not an employee under this section. *Bristol v. Smith*, 158 N. Y. 157; 53 N. E. Rep. 42 (1899).]

## § 55. Limitation of stockholder's liability.

[That the defendant has not been the owner of stock within two years prior to the commencement of the action is a matter of affirmative defense. *Castner v. Duryea*, 16 App. Div. 249 (1897); *Citizens' Bank of Buffalo v. Weinberg*, 26 Misc. Rep. 518 (1899).]

## PART IV.

## MISCELLANEOUS LAWS AFFECTING CORPORATIONS.

1. Anti-Trust Law.
2. Pools and trusts to control rates of transportation.
3. Proof of consolidation.
4. Amendments to Labor Law, relating to hours of labor and prevailing rate of wages.
5. Amendments to Labor Law, relating to duties of factory inspector and the enforcement of such law.
6. Amendment to Labor Law, relating to the employment of women and children at polishing or buffing.
7. Amendments to Labor Law, relating to manufactures in tenements.

## 1. Anti-Trust Law.

(L. 1899, ch. 727.)

Section 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this State of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this State in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this State of the manufacture, production or sale of any such article or commodity, the free pursuit in this State of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

§ 2. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this State shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding five thousand dollars.

§ 3. The attorney-general may bring an action in the name and in behalf of the people of the State against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this State of any act herein declared to be illegal, or any act, in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

§ 4. Whenever the attorney-general has determined to commence an action or proceeding under this chapter, he may present to any justice of the supreme court, before beginning such action or proceeding under this chapter, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement or combination in violation of this chapter; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show, upon his information and belief that the testimony of such person or persons is material and necessary. The provisions of article one, of title three, of chapter nine of the code of civil procedure, relating to the application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examinations shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office, within this State, of the corporation affected, is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county in which such order for examination is filed.

§ 5. The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an indorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such indorsement, shall be sufficient notice for the attendance of witnesses. Such indorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or

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under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this State.

§ 6. No person shall be excused from answering any questions that may be put to him, or from producing any books, papers or documents, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said justice or referee appointed in the order for his examination, or in obedience to the subpoena of the court, or referee acting under such order, or either of them or in any such case or proceeding.

§ 7. A referee appointed as provided in this act possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this act for non-attendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

§ 8. Chapter three hundred and eighty-three of the laws of eighteen hundred and ninety-seven is hereby repealed.

[The act repealed by section 8 is the former Anti-Trust Law, which is superseded by this chapter.]

## 2. Pools and Trusts to Control Rates of Transportation.

(L. 1899, ch. 727.)

Section 1. Any corporation not organized under the laws of this State engaged in the transportation business, and transacting or conducting the said business or any part thereof in this State, or any partnership of individual, or other association or person whatsoever, so engaged and transacting business as aforesaid, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to control the volume of transportation between this country and Europe, or to control, limit, reg-

ulate or fix the rates thereof, or who shall refuse to sell to any person, either for himself or another, on demand therefor, transportation between the United States and Europe, either eastbound or westbound, at the usual and legal rates, shall be deemed and adjudged guilty of a misdemeanor, and be subject to the other penalties hereinafter provided in this act.

§ 2. Any contract or agreement in violation of any provision of the preceding section of this act shall be absolutely void.

§ 3. Any corporation created or organized by or under the laws of any other State or country which shall violate any provision of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter, to do any business in this State, and upon proper proof thereof in any court of competent jurisdiction in this State its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as the agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf or interest of such corporation, violating any provision of the preceding sections of this act shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 4. This act shall take effect immediately.

## 3. Proof of Consolidation.

(L. 1899, ch. 201.)

Section 1. Where two or more corporations have been or shall hereafter be, consolidated and merged into a new corporation, a certificate of the secretary of State under his official seal concisely stating the names of the respective corporations consolidated, the dates of the filing of the certificates respectively of the incorporation of such corporations in his office, the object for which they were formed, including the nature and locality of their business as set forth in their respective incorporation papers on file in his office, the date of the filing of the consolidation agreement and other proceedings in his office, the name of the new corporation formed by such consolidation and merger, the term of its incorporate existence, the place where its principal office is situated and the amount of its capital stock, shall be presumptive and prima facie evidence in all actions and special proceedings for all purposes of the incorporation of the corporations so consolidated, the incorporation of the new corporation by such consolidation and merger from the date of filing of said consolidation agreement and proceedings, and of the other facts so certified by him.

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**4. Amendments to Law Relating to Hours of Labor and Prevailing Rate of Wages.**

(L. 1899, ch. 567.)

Section 1. Section third of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven entitled "An act in relation to labor, constituting chapter thirty-two of the general laws," is hereby amended to read as follows:

**Hours to constitute a day's work.**

§ 3. Eight hours shall constitute a legal day's work for all classes of employees in this State except those engaged in farm and domestic service unless otherwise provided by law. This section does not prevent an agreement for overwork at an increased compensation except upon work by or for the State or a municipal corporation or by contractors or sub-contractors therewith. Each contract to which the State or a municipal corporation is a party which may involve the employment of laborers workmen or mechanics shall contain a stipulation that no laborer workman or mechanic in the employ of the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers workmen or mechanics upon all such public work or upon any material to be used upon or in connection therewith shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the State where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Each such contract hereafter made shall contain a stipulation that each such laborer, workman or mechanic employed by such contractor, subcontractor or other person on, about or upon such public work shall receive such wages herein provided for. Each contract for such public work hereafter made shall contain a provision that the same shall be void and of no effect unless the person or corporation making or performing the same shall comply with the provisions of this section; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the State or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract which in its form or manner of performance violates the provisions of this section, but nothing in this section shall be construed to apply to

persons regularly employed in State institutions.

§ 2. Section four of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, article one entitled "An act in relation to labor constituting chapter thirty-two of the general laws, is hereby amended so as to read as follows:

**Violations of the labor law.**

§ 4. Any officer agent or employee of this State or of a municipal corporation therein having a duty to act in the premises who violates, evades or knowingly permits the violation or evasion of any of the provisions of this act shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee, otherwise by the governor. Any citizen of this State may maintain proceedings for the suspension or removal of such officer, agent or employee or may maintain an action for the purpose of securing the cancellation or avoidance of any contract which by its terms or manner of performance violates this act or for the purpose of preventing any officer, agent or employee of such municipal corporation from paying or authorizing the payment of any public money for work done thereupon.

§ 3. All acts or parts of acts inconsistent with the provisions of this act, in so far as they are inconsistent, are hereby repealed. But nothing in this act shall apply to any existing contract for public work.

**5. Amendments to Labor Law Relating to Duties of Factory Inspector, and the Enforcement of Such Law.**

(L. 1899, ch. 192.)

Section 1. Sections nineteen, twenty, sixty-one, sixty-five, seventy-seven, seventy-eight and eighty-one of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, entitled "An act in relation to labor, constituting chapter thirty-two of the general laws," are hereby amended so as to read as follows:

**Inspection of scaffolding, ropes, blocks, pulleys and tackles in cities.**

§ 19. Whenever complaint is made to the factory inspector that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons, or ropes of any swinging or stationary scaffolding used in the construction, alteration, repairing, painting, cleaning or pointing of buildings within the limits of a city are unsafe or liable to prove dangerous to the life or limb of any person, such factory inspector shall immediately cause an inspection to be made of such scaffolding, or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons or other parts connected therewith. If, after examin-

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ation, such scaffolding or any of such parts is found to be dangerous to life or limb, the factory inspector shall prohibit the use thereof, and require the same to be altered and reconstructed so as to avoid such danger. The factory inspector or deputy factory inspector making the examination shall attach a certificate to the scaffolding, or the slings, hangers, irons, ropes, or other parts thereof, examined by him, stating that he has made such examination, and that he has found it safe or unsafe, as the case may be. If he declares it unsafe, he shall at once, in writing, notify the person responsible for its erection of the fact, and warn him against the use thereof. Such notice may be served personally upon the person responsible for its erection, or by conspicuously affixing it to the scaffolding, or the part thereof declared to be unsafe. After such notice has been so served or affixed, the person responsible therefor shall immediately remove such scaffolding or part thereof and alter or strengthen it in such manner as to render it safe, in the discretion of the officer who has examined it, or of his superiors. The factory inspector and any of his deputies whose duty it is to examine or test any scaffolding or part thereof, as required by this section, shall have free access, at all reasonable hours, to any building or premises containing them or where they may be in use. All swinging and stationary scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon, when in use, and not more than four men shall be allowed on any swinging scaffolding at one time.

**Protection of persons employed on buildings in cities.**

§ 20. All contractors and owners, when constructing buildings in cities, where the plans and specifications require the floors to be arched between the beams thereof, or where the floors or filling in between the floors are of fire-proof material or brick work, shall complete the flooring or filling in as the building progresses, to not less than within three tiers of beams below that on which the iron work is being erected. If the plans and specifications of such buildings do not require filling in between the beams of floors with brick or fire-proof material all contractors for carpenter work, in the course of construction, shall lay the underflooring thereof on each story as the building progresses, to not less than within two stories below the one to which such building has been erected. Where double floors are not to be used, such contractor shall keep planked over the floor two stories below the story where the work is being performed. If the floor beams are of iron or steel, the contractors for the iron or steel work of buildings in course of construction

or the owners of such buildings, shall thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work, and for the raising or lowering of materials to be used in the construction of such building, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts. If elevating machines or hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractors or owners shall cause the shafts or openings in each floor to be enclosed or fenced in on all sides by a barrier at least eight feet in height. If a building in course of construction is five stories or more in height, no lumber or timber needed for such construction shall be hoisted or lifted on the outside of such building. The chief officer, in any city, charged with the enforcement of the building laws of such city and the factory inspector are hereby charged with enforcing the provisions of this section.

**Deputies and clerks.**

§ 61. The factory inspector may appoint from time to time, not more than fifty persons as deputy factory inspectors, not more than ten of whom shall be women, and who may be removed by him at any time. Each deputy inspector shall receive an annual salary of one thousand two hundred dollars. The factory inspector may designate six or more of such deputies to inspect the buildings and rooms occupied and used as bakeries and to enforce the provisions of this chapter relating to the manufacture of flour or meal food products. One of such deputies shall have a knowledge of mining, whose duty it shall be, under the direction of the factory inspector, to inspect mines and quarries and to enforce the provisions of this chapter relating thereto. The factory inspector may appoint one or more of such deputies to act as clerk in his principal office.

**Payment of salaries and expenses.**

§ 65. All necessary expenses incurred by the factory inspector in the discharge of his duties, shall be paid by the State treasurer upon the warrant of the comptroller, issued upon proper vouchers therefor. The reasonable necessary traveling and other expenses of the assistant factory inspector and deputy factory inspectors, while engaged in the performance of their duties, shall be paid in like manner upon vouchers approved by the factory inspector and audited by the comptroller. All such expenses and the salaries of the factory inspector, assistant and deputies shall be payable monthly.

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**Hours of labor of minors and women.**

§ 77. No minor under the age of eighteen years, and no female shall be employed at labor in any factory in this State before six o'clock in the morning or after nine o'clock in the evening of any day, or for more than ten hours in any one day or sixty hours in any one week, except to make a shorter work day on the last day of the week; or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked. A printed notice stating the number of hours per day for each day of the week required of such persons, and the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where they are employed. But such persons may begin their work after the time for beginning and stop before the time for ending such work, mentioned in such notice, but they shall not be required to perform any labor in such factory, except as stated therein. The terms of such notice shall not be changed after the beginning of labor on the first day of the week without the consent of the factory inspector.

**Change of hours of labor of minors and women.**

§ 78. When, in order to make a shorter work day on the last day of the week, a minor under eighteen years of age, or a female is to be required or permitted to work in a factory more than ten hours in a day, the employer of such persons shall notify the factory inspector, in writing, of such intention, stating the number of hours of labor per day, which it is proposed to require or permit, and the time when it is proposed to cease such requirement or permission; a similar notification shall be made when such requirement or permission has actually ceased. A record of the names of the employees thus required or permitted to work overtime, with the amount of such overtime and the days upon which such work was performed, shall be kept in the office of such factory, and produced upon the demand of the factory inspector.

**Protection of employees operating machinery.**

§ 81. The owner or person in charge of a factory where machinery is used, shall provide, in the discretion of the factory inspector, belt shifters or other mechanical contrivances for the purpose of throwing on or off belts on pulleys. Whenever practicable, all machinery shall be provided with loose pulleys. All vats, pans, saws, planers, cogs, gearing, belting, shafting, set-screws and machinery, of every description, shall be properly guarded. No person shall remove or make ineffective any safeguard around or attached to machinery, vats or pans, while the same are in use, unless for

the purpose of immediately making repairs thereto, and all such safeguards so removed shall be promptly replaced. Exhaust fans of sufficient power shall be provided for the purpose of carrying off dust from emery wheels, grind stones and other machinery creating dust. If a machine or any part thereof is in a dangerous condition or is not properly guarded, the use thereof may be prohibited by the factory inspector, and a notice to that effect shall be attached thereto. Such notice shall not be removed until the machine is made safe and the required safeguards are provided, and in the meantime such unsafe or dangerous machinery shall not be used. When, in the opinion of the factory inspector, it is necessary, the workrooms, halls and stairs leading to workrooms shall be properly lighted. Such lights to be independent of the motive power of such factory. No male person under eighteen years or woman under twenty-one years of age shall be permitted or directed to clean machinery while in motion. Children under sixteen years of age shall not be permitted to operate or assist in operating dangerous machines of any kind.

§ 2. Article one of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven is hereby amended by adding at the end thereof a new section to be known as section twenty-one and to read as follows:

**Factory inspector to enforce provisions of article.**

§ 21. The factory inspector shall enforce all the provisions of this article. He shall investigate complaints made to him of violations of such provisions and if he finds that such complaints are well founded he shall issue an order directed to the person or corporation complained of, requiring such person or corporation to comply with such provisions. If such order is disregarded the factory inspector shall present to the district attorney of the proper county all the facts ascertained by him in regard to the alleged violation, and all other papers, documents or evidence pertaining thereto, which he may have in his possession. The district attorney to whom such presentation is made shall proceed at once to prosecute the person or corporation for the violations complained of, pursuant to this chapter and the provisions of the penal code. If complaint is made to the factory inspector that any person contracting with the State or a municipal corporation for the performance of any public work fails to comply with or evades the provisions of this article respecting the payment of the prevailing rate of wages, the requirements of hours of labor or the employment of citizens of the United States or of the State of New York, the factory inspector shall if he finds such complaints to be well founded, present evidence of such non-compliance to the officer, de-

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partment, or board having charge of such work. Such officer, department or board shall thereupon take the proper proceedings to revoke the contract of the person failing to comply with or evading such provisions.

§ 3. Article six of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, is hereby amended by adding thereto a new section to be known as section ninety-one and to read as follows:

**Inspection of boilers in factories.**

§ 91. All boilers used for generating steam or heat for factory purposes shall be kept in good order, and the owner, agent, manager or lessee of such factory shall have such boilers inspected by a competent person approved by the factory inspector, once in six months, and shall file a certificate showing the result thereof in such factory office and a duplicate thereof in the office of the factory inspector. Each boiler or nest of boilers used for generating steam or heat for factory purposes shall be provided with a proper safety-valve and with steam and water gauges, to show, respectively, the pressure of steam and the height of water in the boilers. Every boiler house in which a boiler or nest of boilers is placed, shall be provided with a steam gauge properly connected with the boilers, and another steam gauge shall be attached to the steam pipe in the engine house, and so placed that the engineer or fireman can readily ascertain the pressure carried. Nothing in this section shall apply to boilers in factories which are regularly inspected by competent inspectors acting under the authority of local laws or ordinances.

§ 4. This act shall take effect immediately.

**6. Amendment to Labor Law Relating to the Employment of Women and Children at Polishing or Buffing.**

(L. 1899, ch. 375.)

Section 1. Article six of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, entitled "An act in relation to labor, constituting chapter thirty-two of the general laws," is hereby amended by adding at the end thereof a new section to read as follows:

**Employment of women and children at polishing or buffing.**

§ 91. No male child under the age of eighteen years, nor any female, shall be employed in any factory in this State in operating or using any emery, corundum, stone or emery polishing or buffing wheel. The owner, agent or lessee of a factory who employs any such person in the performance of such work is guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars for each such violation. The factory inspector his assistants

and deputies, shall enforce the provisions of this section.

**7. Amendments to Labor Law Relating to Manufactures in Tenements.**

(L. 1899, ch. 191.)

Section 1. Article seven of chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, entitled "An act in relation to labor, constituting chapter thirty-two of the general laws," is hereby amended to read as follows:

**ARTICLE VII.****Tenement-Made Articles.**

Sec. 100. Manufacturing, altering, repairing or finishing articles in tenements.

- 101. Register of persons to whom work is given.
- 102. Goods unlawfully manufactured to be labeled.
- 103. Powers and duties of boards of health relative to tenement-made articles.
- 104. Inspection of articles manufactured in other States.
- 105. Owners of tenement and dwelling houses, or of buildings in the rear of such buildings, not to permit the unlawful use thereof.

**Manufacturing, altering, repairing or finishing articles in tenements.**

§ 100. No room or apartment in any tenement or dwelling house, or in a building situated in the rear of any tenement or dwelling house, shall be used for the purpose of manufacturing, altering, repairing or finishing therein, any coats, vests, knee-pants, trousers, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, dresses, waists, waist bands, underwear, neckwear, furs, fur trimmings, fur garments, skirts, shirts, purses, feathers, artificial flowers, cigarettes, cigars or umbrellas, unless a license is secured therefor as provided in this article. But nothing herein contained shall apply to collars, cuffs, shirts or shirt waists made of cotton or linen fabrics that are subjected to the laundrying process before being offered for sale.

Application for such a license shall be made to the factory inspector by any family or a member thereof desiring to manufacture, alter, repair or finish any of such articles in any room or apartment in any tenement or dwelling house, or by any person desiring to perform such work in any building in the rear of any tenement or dwelling-house. Such application shall describe the room or apartment, shall specify the number of persons to be employed therein and shall be in such form as the factory inspector may determine. Blank applications shall be prepared and furnished by the factory inspector. Before any such license is granted, an inspection of the room, apartment or building sought to be licensed must be made by the factory inspector. If the factory inspector ascertain that such

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room, apartment or building is in a clean and proper sanitary condition and that the articles specified in this section may be manufactured therein under clean and healthful condition, he shall grant a license permitting the use of such room, apartment or building, for the purpose of manufacturing, altering, repairing or finishing such articles. Each license shall state the maximum number of persons who may be employed in the room or rooms to which such license relates. The number of persons to be so employed shall be determined by the number of cubic feet of air space contained in each room or apartment mentioned in such license, allowing not less than two hundred and fifty cubic feet for each person employed between the hours of six o'clock in the morning and six o'clock in the evening; and, unless by a special written permit of the factory inspector, not less than four hundred cubic feet for each person employed therein between the hours of six o'clock in the evening and six o'clock in the morning, but no such permit shall be issued unless such room or apartment is lighted by electricity or other suitable light, at all times during such hours, while such persons are employed therein. Such license must be framed and posted in a conspicuous place in each room or apartment to which it relates. It may be revoked by the factory inspector if the health of the community or of the employees requires it, or if it appears that the rooms or apartments to which such license relates are not in a healthy and proper sanitary condition. Every room or apartment in which any of the articles named in this section are manufactured, altered, repaired or finished shall be kept in a clean and sanitary condition and shall be subject to inspection and examination by the factory inspector, for the purpose of ascertaining whether said garments or articles or any part or parts thereof, are clean and free from vermin and every matter of an infectious or contagious nature. No person shall hire, employ or contract with any member of a family, or any person not holding a license therefor, to manufacture, alter, repair or finish, any of the articles named in this section in any room or apartment in any tenement or dwelling house or in any room or apartment in any building situated in the rear of a tenement or dwelling house as aforesaid. This section shall not prevent the employment of a tailor or seamstress by any person or family for the purpose of making, altering, repairing or finishing any article of wearing apparel for such person or for family use.

**Register of persons to whom work is given.**

**§ 101.** Persons contracting for the manufacturing, altering, repairing or finishing of

any of the articles mentioned in section one hundred of this act or giving out material from which they or any part of them are to be manufactured, altered, repaired or finished shall keep a register of the names and addresses plainly written in English of the persons to whom such articles or materials are given to be so manufactured, altered, repaired or finished or with whom they have contracted to do the same. Such register shall be subject to inspection by the factory inspector, and a copy thereof shall be furnished on his demand.

**Goods unlawfully manufactured to be labeled.**

**§ 102.** Articles manufactured, altered, repaired or finished contrary to the provisions of section one hundred of this chapter shall not be sold or exposed for sale by any person. The factory inspector shall conspicuously affix to any such article found to be unlawfully manufactured, altered, repaired or finished a label containing the words "tenement-made" printed in small pica capital letters on a tag not less than four inches in length. The factory inspector shall notify the person owning or alleging to own such article that he has so labeled it. No person, except the factory inspector, shall remove or deface any tag or label so affixed.

**Powers and duties of boards of health relative to tenement-made articles.**

**§ 103.** If the factory inspector finds evidence of disease present in a workshop or in a room or apartment in a tenement or dwelling house or in any room or apartment of a building in the rear of a tenement or dwelling house, in which any of the articles named in section one hundred of this chapter are manufactured, altered, repaired or finished or in process thereof he shall affix to such articles the label prescribed in the preceding section, and immediately report to the local board of health, who shall disinfect such articles, if necessary, and thereupon remove such label. If the factory inspector finds that infectious or contagious diseases exist in a workshop, room or apartment of a tenement or dwelling house or of a building in the rear thereof, in which any of the articles specified in section one hundred of this chapter, are being manufactured, altered, repaired or finished, or that articles manufactured or in process of manufacture therein are infected, or that goods used therein are unfit for use, he shall report to the local board of health, and such board shall issue such order as the public health may require. Such board may condemn and destroy all such infected articles or articles manufactured or in the process of manufacture under unclean or unhealthful conditions.

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**Inspection of articles manufactured in other States.**

§ 104. Whenever it is reported to the factory inspector that any of the articles named in section one hundred of this chapter are being shipped into this State, having previously been manufactured in whole or in part under unclean, unsanitary or unhealthy conditions, said inspector shall examine said articles and the conditions of their manufacture, and if upon such examination said goods or any part of them are found to contain vermin or to have been manufactured in improper places or under unhealthy conditions, he shall forthwith affix to them the tag or label hereinbefore described and report thereof to the local board of health, which board shall thereupon make such order or orders as the public safety may require.

**Owners of tenement and dwelling houses not to permit the unlawful use thereof.**

§ 105. The owner, lessee or agent of a tenement or dwelling house or of a building in the rear of a tenement or dwelling house shall not permit the use thereof for the manufacture, repair, alteration or finishing of any of the articles mentioned in this article contrary to its provisions. If a room or

apartment in such tenement or dwelling house, or in a building in the rear of a tenement or dwelling house be so unlawfully used, the factory inspector shall serve a notice thereof upon such owner, lessee or agent. Unless such owner, lessee or agent shall cause such unlawful manufacture to be discontinued within thirty days after the service of such notice, or, within fifteen days thereafter, institutes and faithfully prosecutes proceedings for the dispossession of the occupant of a tenement or dwelling house, or of a building in the rear of a tenement or dwelling house who unlawfully manufactures, repairs, alters or finishes such articles in any room or apartment therein, he shall be deemed guilty of a violation of this article, as if he, himself, was engaged in such unlawful manufacture, repair, alteration or finishing. The unlawful manufacture, repair, alteration or finishing of any of such articles by the occupant of a room or apartment of a tenement or dwelling house, or of a building in the rear of a tenement or dwelling house shall be a cause for dispossessing such occupant by summary proceedings to recover possession of real property as provided in the code of civil procedure.

§ 2. This act shall take effect September first, eighteen hundred and ninety-nine.

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Attachment.

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## PART VII.

## PROVISIONS OF THE CODE OF CIVIL PROCEDURE.

**Attachment.**

§ 636, subd. 2. That the defendant is either a foreign corporation or not a resident of the State; or, if he is a natural person and a resident of the State, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the State, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of or secrete property with the like intent; or where, for the purpose of procuring credit, or the extension of credit, the defendant has made a false statement

in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent, made with his knowledge and acquiescence as to his financial responsibility or standing; or, where the defendant, being an adult and a resident of the State, has been continuously without the State of New York for more than six months next before the granting of the order of publication of the summons against him, and has not made a designation of a person upon whom to serve a summons in his behalf, as prescribed in section four hundred and thirty of this act; or a designation so made no longer remains in force; or service upon the person so designated cannot be made within the State, after diligent effort. (Thus amended by L. 1899, ch. 598.)

## Actions and proceedings.

## PART VIII.

## ACTIONS AND PROCEEDINGS.

**§ 1780. When foreign corporations may be sued.**

[Where a cause of action against a foreign corporation is not one which a non-resident is permitted by section 1780 to maintain, the failure of the plaintiff to allege in his complaint that he is a resident is fatal to jurisdiction, and the court should dismiss the complaint, although the objection is not raised by answer or demurrer. O'Reilly v. New Brunswick, Amboy, etc., Co., 28 Misc. Rep. 112.

The Municipal Court of New York has no jurisdiction over a foreign corporation. 28 Misc. Rep. 173 (1899).]

**§ 1784. Sequestration.**

[A judgment creditor's action for the sequestration under section 1784 cannot be maintained against a foreign corporation. Dreyfus & Co. v. Seal & Co., 37 App. Div. 351 (1899).

A receiver of a mutual life insurance corporation, in sequestration proceedings, has power to levy assessments on the outstanding capital stock notes. Regener v. Phillips, 26 Misc. Rep. 311 (1899).

As between a receiver appointed in a sequestration action instituted by a general judgment creditor of the corporation, and a receiver appointed at the same time in an action for the foreclosure of such a mortgage purporting to include future earnings and products, the sequestration receiver has the superior right in debts and accounts due to the corporation upon sales by it of products of its plant, produced after the giving of the mortgage and before the appointment of either receiver. N. Y. Security Co. v. Saratoga Gas & Elec. Co., 189 N. Y. 137; 53 N. E. Rep. 758 (1899), reversing 30 App. Div. 89.]

**§ 2423. Order of reference in voluntary dissolution.**

An order of reference, requiring all persons interested to show cause why the corporation should not be dissolved, should not be granted without notice to the directors de facto. Matter of Colton, 26 Misc. Rep. 571 (1899).

**Final order in voluntary dissolution.**

§ 2429. Upon an application for a final order, if it appear to the court in a case specified in section twenty-four hundred and nineteen of this act, that the corporation is insolvent, or, in a case specified either in that section, or in section twenty-four hundred and twenty of this act, that, for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders and not injurious to the public interests, the court must make a final order dissolving the corporation, and appointing one or more receivers of its property. But in the case of a solvent corporation, the court may if there is no objection by creditors, dispense with a receiver and provide in the final order for the distribution of the assets. Upon the entry of the order the corporation is dissolved. The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property. In a proceeding for the voluntary dissolution of a corporation, the court may, in the furtherance of justice, upon notice to the attorney-general, and the attorney-general not objecting, and upon such further notice to creditors or others interested as the court shall direct, which notice may be made by mail upon all persons and corporations not residing or existing within the State, relieve a receiver from any omission, defect or default, in any proceeding or act required by law to be taken or done, or in the giving of any notice required by law to be given, and the court may upon like notice, confirm any act of a receiver, and any decision, report, order or judgment made in such proceeding. (Amended by ch. 599 of 1899.)

[The amendment consists of the provision authorizing the court to dispense with a receiver in the case of a solvent corporation.]

## Receivers.

## PART IX.

## RECEIVERS.

**Application for appointment.**

[Expense of application a first charge. *Matter of New Paltz & Wallkill R. R. Co.*, 27 Misc. Rep. 451 (1899).

**Appointment of receiver of foreign corporation.**

The court will not appoint a receiver of a foreign corporation in the absence of proof that the corporation has fraudulently disposed of property within the State or that the corporation has property within the State to which the receivership might attach. *Dreyfus & Co. v. Seale & Co.*, 37 App. Div. 351 (1899).

**Powers of temporary receiver.**

A temporary receiver need not account to himself, when he is made permanent receiver of the same property. *Matter of Simonds Mfg. Co.*, 39 App. Div. 576 (1899).

He is not authorized to pay debts where there is no provision in the order appointing him authorizing him to do so. *Mercantile Trust Co. v. Kings Co. El. R. R.*, 40 App. Div. 141 (1899).

**Application by creditor to compel payment of claim.**

The expense of the application may properly be made a first charge upon the funds in the hands of the receiver. *Matter of New Paltz & Wallkill R. R. Co.*, 27 Misc. Rep. 451 (1899).

**Actions against receiver.**

A motion for leave to sue a receiver must be made in the judicial district or in a county adjoining the county in which the action in which receiver was appointed was brought. *Matter of Commercial Bank*, 35 App. Div. 224 (1898).

**Actions maintainable by receiver.**

The receiver of an insurance corporation and not the policyholders is the proper party to compel restoration of a fund improperly paid under order of the court. *Mills v. Ross*, 39 App. Div. 553 (1899). The receiver is liable to account to the court for such fund, and an action by a policyholder against the recipient does not lie. *Id.*

**Accounting.**

Where a temporary receiver, in a proceeding for voluntary dissolution, is made permanent, an accounting to himself as permanent receiver is unnecessary. Creditors who have not appeared in a proceeding wherein a temporary receiver accounts to himself as permanent receiver, on his accounting as permanent receiver are entitled to require him to account for everything received by him in his capacity as temporary receiver. *Matter of Simonds Mfg. Co.*, 39 App. Div. 576 (1899).

**Foreign receivers.**

The receiver of a foreign corporation may maintain an action in this State to enforce an assessment made upon a stockholder, if it does not appear that any creditor of the corporation in this

State has made any claim upon such stockholder, or that there were creditors in the State whose rights would be injuriously affected by such recovery. *Howard v. Angle*, 39 App. Div. 151 (1899).

An ancillary receiver of a foreign corporation, appointed under an order investing him with the usual powers and duties of receivers according to the laws of this State and the practice of this court, including the right to continue the business of the corporation, has, except in so far as his powers are limited by the fact that his appointment is ancillary, all the powers of trustees of insolvent debtors. *Goodrich v. Sanderson*, 35 App. Div. 546 (1898).

**Payment of wages by receivers.**

A salesman employed by a corporation which is entitled to command his entire time and ability is to be considered an employee within the meaning of Laws of 1885, chapter 376 (act from which section 8 of Labor Law was derived); and when his compensation as agreed upon consists partly of a specified weekly salary and partly of commissions, he is entitled to preferential payment by receiver. *Matter of Luxton & Black Co.*, 35 App. Div. 243 (1898). But see *Matter of Stryker*, 159 N. Y. 526, post.

The term "employees" used in the act of 1885, chapter 376, is to be limited by the more specific words which follow: "Operatives and laborers." So held in *Matter of Stryker*, 159 N. Y. 526, 53 N. E. Rep. 525 (1889), affirming 73 Hun, 327. When the act of 1885 was revised in section 8 of the Labor Law the restrictive terms were omitted, and the word "employees" used. The term "wages" was, however, retained, and the court in the above case lays particular stress upon the use of this term as being commonly applied to the payment for manual labor, or other labor of menial or mechanical kind, as distinguished from salary and from fee, which denotes compensation paid to professional men. An attempt is made to distinguish *Palmer v. Santvoord*, 153 N. Y. 612; 47 N. E. Rep. 915; and one judge dissenting on the authority of this case. While the language of the statute has been changed in section 8 of the Labor Law by the omission of the terms "operatives or laborers," the restrictive term "wages" is retained, and the Court of Appeals, if called upon to construe it, would doubtless confine its application to the same class of employees as under the act of 1885.]

**Compensation of receivers.**

§ 3320. A receiver, except as otherwise specially prescribed by statute, is entitled, in addition to his lawful expenses, to such a commission, not exceeding five per centum upon the sums received and disbursed by him, as the court by which, or the judge by whom, he is appointed, allows. But if in any case the commissions of a temporary or permanent receiver, so computed, shall not amount to one hundred dollars, said court or judge may, in its or his discretion, allow said receiver such a sum, not exceeding one hundred dollars, for his commissions as shall be commensurate with the services rendered by said receiver. Any receiver,

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Receivers.

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assignee, guardian, trustee, committee, executor or administrator required by law to give a bond as such may include as a part of his lawful commissions such reasonable sum not exceeding one per centum per annum upon the amount of such bond paid his surety thereon as such court or judge allows. (Code Civ. Pro., as amended by L. 1899, ch. 94.)

**Appraisal of property in hands of receiver.**

Section 1. Whenever by reason of the provisions of any law of this State it shall become necessary to appraise in whole or in part the estate of any deceased person, or of any insolvent estate in the hands of a receiver, or of any assignee for the benefit

of creditors, or of any corporation in the hands of a receiver or otherwise, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time. (L. 1891, ch. 34.)

## Tax L., § 2 — Definitions; franchises.

## PART X.

## TAXATION.

**Definitions.**

§ 2, subd. 3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax. (Thus amended by L. 1899, ch. 712.)

[This is the Franchise Tax Law, which included franchises in the definition of real estate, and provided for their assessment in accordance with sections 42-47, post.]

**§ 4, subd. 14. Exemption of savings bank deposits.**

[Depositors in savings banks are not taxable on their deposits. *People ex rel. Hermance v. Dederick*, 35 App. Div. 29 (1898); affirmed, 158 N. Y. 414; 53 N. E. Rep. 163 (1899).]

**§ 7. When property of non-residents is taxable.**

[The value of notes and open accounts owing to a foreign corporation for merchandise sold in this State is properly included in the assessment. *People ex rel. Armstrong Cork Co. v. Barker*, 157 N. Y. 159; 51 N. E. Rep. 1043 (1898).]

Where a foreign corporation designates a principal place of business within the State, and the intent of the corporation is to establish a permanent and continuous business, which included both the manufacture and sale of goods, it is assessable on the merchandise it has on hand, although in part manufactured without the State. *Id.*, distinguishing *People ex rel. Sherwin-Williams Co. v. Barker*, 149 N. Y. 623; 44 N. E. Rep. 1128.]

**§ 12. Taxation of corporations.**

[The assessors should deduct the debts of the corporation in fixing the actual value of the capital. *People ex rel. Rochester R. Co. v. Pond*, 37 App. Div. 330 (1899).]

**Preparation of assessment roll.**

§ 21. They shall prepare an assessment roll containing six separate columns and shall, according to the best information in their power, set down:

1. In the first column the names of all the taxable persons in the tax district.
2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.
3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents and if payable in any other thing except money the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the rent assessed

## Tax L., §§ 31, 37, 42 — Assessment of franchise.

cannot be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

6. In the sixth column the value of the special franchise as fixed by the State board of tax commissioners. (Amended by L. 1899, ch. 712.)

**Corporations, how assessed.**

§ 31. The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the State and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property, except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in, and of all of such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the State and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the State board of tax commissioners. (Amended by L. 1899, ch. 712.)

[Where a domestic corporation furnishes the commissioners of taxes and assessments of the city of New York with a full and complete statement of its assets and liabilities, with a balance sheet supporting such statements, the commissioners are, in the absence of any other evidence, bound to make such statement the basis of their assessment. *People ex rel. Seldenberg Co. v. Feitner*, 41 App. Div. 571 (1899).]

§ 37. When the assessors or a majority of them shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths and shall severally make and subscribe before such officer an oath in the following form: "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value

of the said real estate has been changed by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the State board of tax commissioners, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer. (Amended by L. 1899, ch. 712.)

**Assessment of special franchise.**

§ 42. The State board of tax commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, village or tax district. Such board shall not less than ten nor more than thirty days next preceding the date when an annual assessment is required by law to be completed in any such city, town or village, file with the clerk of such city, town or village a written statement of the valuation of each special franchise in such city, town, village or tax district as fixed and determined by such board; and the valuation so fixed, shall be the assessed valuation on which all taxes based on such special franchise in such city, town or village for State, municipal, school or highway purposes, shall be levied during the next ensuing year. The assessors or other taxing officer, or other local officer in any city, town or village, or any State or county officer, shall on demand furnish to the State board of tax commissioners any information required by such board for the purpose of determining the value of a special franchise. Each city, town or village clerk shall within five days after the receipt by him of a statement of assessment of a special franchise by the State board of tax commissioners, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments, in each tax district in such city, town or village. The valuation of a special franchise as so fixed by the State board of tax commissioners shall be entered by the assessors or other officers in the proper column of the assessment roll. (Added by L. 1899, ch. 712.)

**Report to State board of tax commissioners.**

§ 43. Every person, co-partnership, association or corporation subject to taxation

**Tax L., §§ 44-46 — Franchise tax.**

on a special franchise, shall, within thirty days after this section takes effect, or within thirty days after such special franchise is acquired, make a written report to the State board of tax commissioners containing a full description of every special franchise possessed or enjoyed by such person, co-partnership, association or corporation, a copy of the special law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the State board. The State board of tax commissioners may from time to time require a further or supplemental report from any such person, co-partnership, association or corporation, containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same, to the effect that the statements contained therein are true. Such board may prepare blanks to be used in making the reports required by this section. Every person, co-partnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the State board of tax commissioners within a reasonable time specified by it, shall forfeit to the people of the State the sum of one hundred dollars for every such failure and the additional sum of ten dollars for each day that such failure continues, and shall not be entitled to review the assessment by certiorari, as provided by section forty-five of this chapter. (Added by L. 1899, ch. 712.)

**Hearing on special franchise assessment.**

§ 44. On making an assessment of a special franchise, the State board of tax commissioners shall immediately give notice in writing to the person, copartnership, association or corporation affected, stating in substance that such assessment has been made, the total valuation of such special franchise, and the valuation thereof in each city, town, village or tax district; and that the board will meet at its office in the city of Albany on a day specified in such notice, which must not be less than twenty nor more than thirty days from the date of the notice, to hear and determine any complaint concerning such assessment. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation, by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by

mailing it to him at his place of business or last known place of residence. Section thirty-six of this chapter applies so far as practicable to a hearing by the State board of tax commissioners under this section. (Added by L. 1899, ch. 712.)

**Certiorari to review assessment.**

§ 45. An assessment of a special franchise by the State board of tax commissioners may be reviewed in the manner prescribed by article eleven of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; except that a petition for a writ of certiorari to review the assessment must be presented within fifteen days after notice of the filing of the statement of the valuation of a special franchise with the clerk of the city, town or village, as prescribed by section forty-two of this chapter. Such writ must run to and be answered by said State board of tax commissioners and no writ of certiorari to review any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or judge granting the writ. An adjudication made in the proceeding instituted by such writ of certiorari shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. The State board of tax commissioners on filing with the city, town or village clerk a statement of the valuation of a special franchise, shall give to the person, copartnership, association or corporation affected written notice that such statement has been filed, and such notice may be served on a copartnership, association or corporation by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence. (Added by L. 1899, ch. 712.)

**Deduction from special franchise tax for local purposes.**

§ 46. If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, co-partnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, co-partnership, asso-

## Tax L., §§ 47, 70, 182, 282.

ciation, or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, shall be deducted from any tax based on the assessment made by the State board of tax commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, co-partnership, association, or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax roll to the person, copartnership, association or corporation affected the amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law. (Added by L. 1899, ch. 712.)

**Special franchise tax not to affect other tax.**

§ 47. The imposition or payment of a special franchise tax as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or franchise tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property subject to a special franchise tax situated in, upon, under or above any street, highway, public place or public waters, as described in subdivision three of section two shall not be taxable except upon the assessment made as herein provided by the State board of tax commissioners. (Added by L. 1899, ch. 712.)

**Notice by collector.**

§ 70. Every collector, upon receiving a tax roll and warrant, shall forthwith cause no-

tice of the reception thereof to be posted in five conspicuous places in the tax district, specifying one or more convenient places in such tax district, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least three days, and if in a city, at least five days, in each week for thirty days from the date of the notice, which shall be the date of the posting or first publication thereof, which days shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll. The collector shall attend accordingly, and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place. In a city, the notice in addition to being posted shall be published once in each week for two weeks successively, in a newspaper published in such city. On the written demand of a non-resident owner of real property included in such tax roll, and the payment by such owner to the collector of the sum of twenty-five cents, the collector shall within twenty-four hours after the receipt of such demand mail in a post-paid envelope directed to such non-resident owner, to the orders to be furnished in such demand, a statement of the amount of taxes assessed against such property with a notice of the dates and places fixed by him for receiving taxes. (Amended by L. 1899, ch. 342.)

**§ 182. State franchise tax.**

[Copyrights granted by the United States are not subject to the taxing power of the State. *People ex rel. A. J. Johnson Co. v. Robert*, 159 N. Y. 70; 53 N. E. Rep. 685 (1899), reversing 35 App. Div. 624. The good-will within the State is taxable. *Id.*]

Where the original packages in which goods were imported have been broken, and the goods taken therefrom and placed in store upon sale, thereby becoming mixed with other property, the restrictions of the Federal Constitution do not apply and the goods become subject to the taxing power of the State. *People ex rel. Matheson & Co. v. Roberts*, 158 N. Y. 162; 52 N. E. Rep. 1102 (1899), affirming 27 App. Div. 632.

Where the property of a corporation is condemned and the proceeds are distributed to the stockholders, the amount so distributed is not to be treated as a dividend for the purpose of assessing the franchise tax. *People ex rel. Jerome Park Co. v. Roberts*, 41 App. Div. 21 (1899).

A corporation of New Jersey, six-sevenths of whose business, carried on in New York, consists of importing goods from Europe and selling part of the same in unbroken original packages, and selling the balance in broken packages, and also in selling domestic goods of a like character, is taxable under this section. *People ex rel. Klipstein & Co. v. Roberts*, 36 App. Div. 597 (1899).]

**Limitation of time.**

Article 13, § 282. The provisions of the code of civil procedure, relative to the limitation of time of enforcing a civil remedy, shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by articles nine or ten of

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Tax L., § 282 — Limitation of time.

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said chapter, and this act shall be construed as having been in effect as of date of the original enactment of the corporation and inheritance tax law, provided, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual.

This act shall not affect any action or proceeding now pending. (Added by L. 1899, ch. 737.)

[The intention of this section is to supersede the decision of the Court of Appeals in People ex rel. N. Y., L. & I. Co. v. Roberts, 157 N. Y. 70; 51 N. E. Rep. 437, in which it was held that the Statute of Limitations ran against the State in the collection of the franchise tax and penalties for its non-payment.]







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## NORTH CAROLINA.

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# NORTH CAROLINA.

## LAWS OF 1899.

### CHAPTER 11.

#### Franchise Tax.

##### AN ACT to raise revenue.

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§ 36. On each and every private business corporation (railroads, banks and insurance companies excepted) a franchise tax in proportion to the amount of its capital stock, according to the following graduated scale, to wit: On corporations having a capital stock of twenty-five thousand dollars (\$25,000) or less, five dollars (\$5); on corporations having a capital stock of over twenty-five thousand dollars (\$25,000) and not exceeding fifty thousand dollars (\$50,000), ten dollars (\$10); on corporations having a capital stock of fifty thousand dollars (\$50,000) and less than one hundred thousand dollars (\$100,000), twenty-five dollars (\$25); on corporations having a capital stock of one hundred thousand dollars (\$100,000) and not exceeding two hundred and fifty thousand dollars (\$250,000), fifty dollars (\$50); on corporations having a capital stock of two hundred and fifty thousand dollars (\$250,000) and less than five hundred thousand dollars (\$500,000), one hundred dollars (\$100); on corporations having a capital stock of five hundred thousand dollars (\$500,000), two hundred dollars (\$200); on companies having a capital stock of one million dollars (\$1,000,000), five hundred dollars (\$500): provided, that when the capital stock of any company or corporation shall not amount to more than one thousand dollars in actual value, the franchise tax imposed by this section shall be ten dollars and no more. By the terms of "capital stock" in this section is meant the amount of capital fixed by the corporation charter, or by the stockholders pursuant to the powers granted in the charters; that in addition to the penalties otherwise provided in this act, the continued failure to pay the franchise tax imposed by this section, on or before the first day of January of said year, shall cause a forfeiture of the charter of such defaulting corporation, and its charter in that event shall be, and the same is hereby repealed. This section shall apply equally to all companies whether home or foreign: provided, that when the capital stock of any land company or corporation shall not amount in actual value to more than ten thousand dollars, the tax imposed by this section shall be twenty-five dollars

and no more: provided, that only the capital stock subscribed for shall be taxed under this section.

§ 37. That any joint-stock association, company, copartnership or corporation, whether incorporated under the laws of this State or of any other State, or of any foreign nation, engaged in transmitting to, from, through, in or across the State of North Carolina, telegraphic messages, shall be deemed and held to be a telegraph company, and every such telegraph company shall annually, between the first day of January and the twentieth day of February, make out and deliver to the auditor of this State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the thirty-first day of December next preceding, showing: First. The total capital stock of such association, company, copartnership or corporation. Second. The number of shares of capital stock issued and outstanding and the par or face value of each share. Third. Its principal place of business. Fourth. The market value of said shares of stock on the thirty-first day of December next preceding, and if such shares have no market value, then the actual value thereof. Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county where the same is assessed for local taxation. Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situated outside the State of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated. Seventh. All mortgages upon the whole or any (part) of its property, together with the dates and amounts thereof. Eighth. (a) The total length of the lines of the said association or company; (b) the total length of so much of their lines as is outside of the State of North Carolina; (c) the length of the line within each of the counties and townships within the State of North Carolina.

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**Listing property; foreign corporations.****CHAPTER 15.****Listing Property of Corporation.**

**AN ACT** to provide for the assessment of property and the collection of taxes.

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§ 39. Bridge, express, ferry, gas, manufacturing, mining, savings bank, stage, steam-boat, street railroad transportation and all other companies and associations incorporated under the laws of this State, except insurance companies, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly: (1) the name of the location of company or association; (2) the amount of capital stock authorized, and the number of shares into which such capital stock is divided; (3) the amount of capital stock paid up; (4) the market value, or if no market value, then the actual value of the shares of stock; (5) the assessed valuation of all its real and personal property (which real and personal property is listed and assessed under this chapter). The aggregate of the fifth item shall be deducted from the aggregate value of its shares of stock as provided by the fourth item, and the remainder, if any, shall be listed by list-taker in the name of such company or corporation as capital stock thereof. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the list-taker to make such return or statement from the best information which he can obtain.

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**CHAPTER 23.****Repeal of Act Requiring Corporate Officers to Take Oath.**

**AN ACT** to repeal chapter three hundred and thirty-one (331) of the public laws of eighteen hundred and ninety-seven.

Section 1. That chapter three hundred and thirty-one (331), public laws of 1897, be and the same is hereby repealed.

§ 2. That this act shall be in force from and after its ratification. (Ratified the 26th day of January, A. D. 1899.)

See Anno. Corp. L., N. C., p. 27, act 7, for act repealed hereby.

**CHAPTER 62.****How Foreign Corporation May Become Domestic.**

**AN ACT** to provide a manner in which foreign corporations may become domestic corporations.

Section 1. That every telegraph, telephone, express, insurance, steamboat and railroad company incorporated, created and organized under and by virtue of the laws of any State or government other than that of North Carolina, desiring to own property or to

carry on business or to exercise any corporate franchise whatsoever in this State, shall become a domestic corporation of the State of North Carolina by filing in the office of the secretary of State a copy of its charter duly authenticated in the manner directed by law for the authentication of statutes of the State or country under the laws of which such company or corporation is chartered and organized, and a copy of its by-laws duly authenticated by the oath of its secretary. Such corporation shall pay therefor to the secretary of State, to be turned over by him into the State treasury, such fees as are or may be required by law.

§ 2. That if any such charter or by-laws, or any part thereof, filed in the office of the secretary of State, shall be in contravention or violation of the laws of this State, such charter or by-laws or such part thereof as are in conflict with the laws of this State, shall be null and void in this State.

§ 3. That when any such corporation shall have complied with the provisions of this act above set out, it shall thereupon immediately become a corporation of this State and shall enjoy the rights and privileges, and be subject to the liability of corporations of this State the same as if such corporation had been originally created by the laws of this State. It may sue and be sued in all courts of this State and shall be subject to the jurisdiction of the courts of this State as fully as if such corporation were originally created under the laws of the State of North Carolina.

§ 4. That on and after the first day of June, eighteen hundred and ninety-nine, it shall be unlawful for any such corporation to do business or to attempt to do business in this State without having fully complied with the requirements of this act.

§ 5. Any such corporation violating any provision of this act shall forfeit to the State of North Carolina a penalty of two hundred dollars for each and every day after the first day of June, eighteen hundred and ninety-nine, on which such corporation shall have continued to operate or do business without having complied with the requirements of this act. Such penalty shall be recoverable by the treasurer of the State for the benefit of the State of North Carolina, and it shall be his duty to sue for such forfeitures in the superior court of Wake county as the same accrue.

§ 6. No telegraph, telephone, express, insurance, steamboat or railroad company, which is a foreign corporation of another State doing business in North Carolina, shall be allowed to sue in the courts of North Carolina on or after June first, eighteen hundred and ninety-nine, until such foreign corporation has become a domestic corporation, either by special act of the legislature or under the provisions of this act.

§ 7. No such foreign corporation, mentioned in the preceding section of this act,

## Amendment of charter; trusts and pools.

shall be allowed to enter into a contract in the State of North Carolina on or after the first day of June, eighteen hundred and ninety-nine, nor shall any such contract heretofore or hereafter made or attempted to be made and entered into by such corporation in the State of North Carolina be enforceable by such corporation, unless such corporation shall on or before the first day of June, eighteen hundred and ninety-nine, become a domestic corporation under and by virtue of the laws of North Carolina.

§ 8. Any such corporation violating the provisions of this act by doing any business in this State without first becoming a domestic corporation in the manner prescribed by law, shall, in addition to the penalty prescribed in section five of this act, forfeit a penalty of five hundred dollars for each day any such business shall be done by it in the State of North Carolina on and after the first day of June, eighteen hundred and ninety-nine. The amount so forfeited under the provisions of this section shall be recovered by the treasurer of North Carolina, and it shall be the duty of said treasurer to institute suit for same in the superior court of Wake county: Provided, the business contemplated in this section of this act does not embrace such business as is strictly the business of interstate commerce. (Ratified the 10th day of February, A. D. 1899.)

## CHAPTER 618.

## Amendment of Charter.

AN ACT to amend chapter nineteen of the laws of eighteen hundred and eighty-five and chapter three hundred and eighty of the laws of eighteen hundred and ninety-three, and to provide for amending the charter or letters-patent of a corporation granted under chapter sixteen (16) of the Code, and the laws amendatory thereof.

Section 1. That section three of chapter nineteen of the laws of eighteen hundred and eighty-five be and the same is hereby repealed.

§ 2. That section one of chapter three hundred and eighty of the laws of eighteen hundred and ninety-three, be stricken out and the following be inserted in lieu thereof, to wit:

Any corporation desiring to amend its charter or letters-patent, as granted either by a clerk of the superior court or the secretary of State under chapter sixteen (16) of the Code, and the laws amendatory thereof, shall cause the proposed amendment to be certified by the president or other chief officer under its corporate seal, attested by the secretary to the clerk of the superior court of the county in which the articles of agreement are recorded, showing the same to have been previously authorized and adopted by a majority of the stockholders in meeting assembled, and the clerk shall

record the same in his office, and shall send a certified copy thereof under his hand and the seal of his office to the secretary of State. The secretary of State shall thereupon cause said copy to be recorded in his office in the "corporation book," and shall issue a certificate under the great seal of the State declaring the charter or letters-patent amended, according to the terms and conditions of the proposed amendment received from said clerk, which said certificate shall be recorded in the office of said clerk in the record of incorporations.

And for the services rendered hereinunder, said clerk and secretary of State shall respectively have and be entitled to collect and receive the same fees as are now provided by law for recording articles of agreement, copy the same, and for issuing and recording letters-patent and affixing the great seal of the State thereto.

See Anno. Corp. L., N. C., p. 25, act 4.

## CHAPTER 666.

## Pools, Trusts and Conspiracies Unlawful Combinations.

AN ACT providing for the punishment of pools, trusts and conspiracies, and as to evidence and prosecution in such cases.

Section 1. Any corporation organized under the laws of this or any other State or country, for transacting or conducting any kind of business in this State, or any partnership or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of, or party to, any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to penalties as provided in this act.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture

## Decisions.

or output of any such article: Provided, that nothing herein contained shall effect\* the present investments of charitable or educational institutions.

§ 3. Any corporation or company, individual, firm or association violating any of the provisions of this act shall forfeit one hundred dollars for each day it shall continue to do so, to be recovered by an action in the name of the State, at the relation of the solicitor, moneys thus recovered to go into the revenue fund of the county in which the cause accrues.

§ 4. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 5. Any corporation created or organized by or under the laws of this State, which shall violate any provision of the preceding sections of this act shall thereby forfeit its corporate rights and franchises, and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this State, be by the court declared forfeited, void and of no effect, and shall thereupon cease and determine; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of State, who shall take notice and be governed thereby as to the corporate papers of said corporation.

§ 6. This act shall not apply to agricultural products while in the hands of the producer, nor to the lumber interests of the State, neither shall it prevent cotton or woolen mills from regulating the amount of their output or selling the same through an agent.

§ 7. In any indictment or information for any offense named in this act it shall be sufficient to state the purposes and effects of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description or how or where it was created.

§ 8. In proceedings under this act it shall

be sufficient to prove that a trust or combination as herein defined exists and that the defendant belonged to it or acted for or in connection with it, without proving all members belonging to it or producing or proving any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all, and a preponderance of evidence shall be sufficient to authorize a verdict and judgment for the State.

§ 9. In all suits instituted under this act to forfeit charters, or corporations, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court, the superior court rendering such judgment shall allow the solicitor or prosecuting attorney prosecuting the suit, a fee of not less than one hundred dollars nor more than five hundred dollars, to be paid out of the assets of said corporation: Provided, that in case such cause is appealed to the supreme court and the payment of forfeiture affirmed, the attorney-general shall be entitled to one-half of the fee so allowed by the superior court for his services in prosecuting said cause in the appellate court.

§ 10. That this act shall not apply to any wholesale or retail merchant or jobber doing business in this State, who is not a party to or interested in a trust, nor the agent of a trust, nor shall it apply to any fishing, trucking or canning industry in this State, nor to any persons, firms or corporation engaged therein. But no person or firm shall be deemed to be the agent of a trust because of the sale of trust manufactured goods or products when the said person or firm buys said goods or products and sells the same as his or its own property.

§ 11. That all laws in conflict with the provisions of this act are hereby repealed.

§ 12. That this act shall be in force from and after its ratification. (Ratified the 8th day of March, A. D. 1899.)

## DECISIONS.

(Include 33 S. E. Rep. 930.)

## Promoters.

Where promoters held proxies of a majority of the shares and voted the same in making a contract, whereby they received certain non-assessable paid-up stock, such contract was not void on its face. Gaines v. McAlister, 122 N. C. 340; 29 S. E. Rep. 844 (1898).

## Officers.

The president of a corporation, even though he be the business manager, cannot,

without a just consideration moving to the body, create an indebtedness against it by undertaking to assume for it liability for an individual debt of his own. Barnhardt v. Star Mills, 123 N. C. 428; 31 S. E. Rep. 719 (1898).

Plaintiff admitting that his right to recover rent depended on the power of the officers of a corporation to make the assignment of the lease contract to him, defendant was entitled to show a release and discharge from the same officers, without showing their power. Brown v. Miensset, 123 N. C. 371; 31 S. E. Rep. 672 (1898).

\* So in session laws.

## Decisions.

A confession of judgment by an insolvent corporation to one creditor is not void as to another because the president, who is surety on the debt confessed, buys in the property at sheriff's sale, and also the unsatisfied part of the judgment, no fraud being claimed. *Howard v. Central Warehouse Co.*, 123 N. C. 90; 31 S. E. Rep. 371 (1898).

**Stock and stockholders.**

A corporation is a necessary party to an action by a creditor to recover balances unpaid on stock subscriptions. *Cooper v. Rdel Security Co.*, 122 N. C. 463; 30 S. E. Rep. 348 (1898).

In an action to recover the selling price of stock, the defense to which is false representations on the part of the seller, inducing defendants to purchase, an instruction, that if plaintiff had obtained the stock so sold under a void contract with the corporation, he could not recover, is not pertinent to the issues. *Gaines v. McAlister*, 122 N. C. 340; 29 S. E. Rep. 844 (1898).

A complaint alleged that defendant subscribed for fifteen shares of stock in a mining company, of the par value of \$1,500; that he had only paid \$500 thereon; and still owed \$1,000 on said stock; that said company has been declared insolvent; that it would take the whole of the \$1,000 due by defendant to pay creditors; that plaintiff has been duly appointed receiver of said company; and that defendant refuses to pay said indebtedness. Held, good on demurrer. *Worth v. Wharton*, 122 N. C. 376; 29 S. E. Rep. 370 (1898).

**Liability for torts of agent.**

Where a corporation authorizes its agent to settle with a subagent, it is not liable to the subagent for slanderous words used to him by the agent, it not appearing that the words were spoken with the authority or consent of the corporation, or that they have

been ratified. *Redditt v. Sugar Mfg. Co.*, (Sup. Ct., N. C.) 32 S. E. Rep. 392 (1899).

**Deed.**

The registration of a deed from a corporation is a nullity, where it was acknowledged by individuals. *Bernhardt v. Brown*, 122 N. C. 587; 29 S. E. Rep. 884 (1898).

**Mortgages; priority of other claims.**

Under Code, section 1255, providing that mortgages of corporations shall not exempt property or earnings from any judgment for torts, a purchaser at foreclosure takes subject to a judgment obtained subsequent to the sale. *Wilmington & W. R. Co. v. Burnett*, 123 N. C. 210; 31 S. E. Rep. 602 (1898). See Anno. Corp. L., N. C., p. 23, § 1255.

A dynamo used in an electric light and power plant of a company is not "material," within the meaning of Code, section 1255, providing that mortgages upon the property of a corporation shall not exempt its property from an execution for material furnished the corporation. *General Elec. Co. v. Morganton Elec. Lt. & Power Co.*, 122 N. C. 599; 30 S. E. Rep. 314 (1898).

See Anno. Corp. L., N. C., p. 23, § 1255.

A claim for material furnished, which was necessary, and was used in the manufacture of paper in the mills of a corporation, has priority under Code, section 1255, as a debt of the corporation, over a mortgage given by the corporation on its property. *Belvin v. Raleigh Paper Co.*, 123 N. C. 138; 31 S. E. Rep. 655 (1898).

See Anno. Corp. L., N. C., p. 23, § 1255.

**Foreign corporations.**

Unpaid stock subscriptions due a foreign corporation are property which can be attached within the State, and subjected to the payment of corporate debts, within Code, section 218, subdivision 1. *Cooper v. Adel Security Co.*, 122 N. C. 463; 30 S. E. Rep. 348 (1898).

See Anno. Corp. L., N. C., p. 8, § 218.







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NORTH DAKOTA.

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# NORTH DAKOTA.

## LAWS OF 1899.

### CHAPTER 52.

#### Secretary of State Shall Certify Granting of Charter.

AN ACT to amend section 2869 of the Civil Code, providing for the secretary of State to making record of, and certifying to the State examiner, when charter is granted to certain corporations.

##### Amendment.

Section 1. That section 2869 of the Civil Code of the State of North Dakota be and the same is hereby amended so as to read as follows:

##### Record by secretary and certifying to State examiner.

§ 2869. Upon the filing of any articles of incorporation as in the last section is prescribed, the secretary of State shall cause the same to be recorded in a book to be kept in his office for that purpose to be called the "Book of Corporations," with the date of filing. And upon filing and recording of any articles of incorporation of any bank, building and loan association, or any moneyed corporation subject to examination by the State examiner, the secretary of State shall forthwith certify to the State examiner the fact that articles of incorporation have been filed, giving the date of such filing.

See Anno. Corp. L., N. Dak., p. 11.

### CHAPTER 53.

#### Real Estate Holdings Limited.

AN ACT to amend section 2859, chapter 11, of the Revised Codes of North Dakota.

#### Religious and charitable; limited.

§ 2859. No corporation or association for religious or charitable purposes shall acquire or hold real estate in this State of greater value than one hundred thousand dollars.

### CHAPTER 54.

#### Legalizing Acts of Notaries Public.

AN ACT legalizing the acts of officers and stockholders of corporations as notaries public in cases where the corporation is interested.

#### Official acts valid in certain cases.

Section 1. That all acknowledgments, affidavits or protests heretofore taken or made by any officer or stockholder of any corporation, who was at the time of taking the same, a duly appointed and qualified notary public in this State or the former Territory of Dakota; and all other official acts of said

notary public are hereby declared to be valid, notwithstanding the corporation, of which said notary was an officer or stockholder, was interested in or a party to the instrument acknowledged or protested, or that the affidavit was one that was required to be taken by some person on behalf of, or against, such corporation, or that any other official act performed by said notary, was one that in some manner related to the business of such corporation.

#### Emergency.

§ 2. An emergency exists in that the acknowledgment of a large number of deeds conveying lands by corporations in this State to purchasers thereof, may be defective by reason that the acknowledgments thereto were taken by a notary public who, at the time of taking said acknowledgments, was an officer or stockholder of the corporation conveying said land, and for that reason the record thereof is not notice to subsequent purchasers or encumbrancers; therefore, this act shall take effect and be in force from and after its passage and approval.

### CHAPTER 55.

#### Judgment of Dissolution.

AN ACT providing for judgment of dissolution in certain actions against corporations.

#### Judgment of dissolution.

Section 1. In any action now or hereafter pending against a corporation organized under the laws of the Territory of Dakota, or of this State, in which a receiver has been appointed, and the property of the corporation taken into the custody of the court, if it shall appear that such corporation has abandoned and forfeited its franchise as provided in chapter 73 of the Laws of 1897, the court shall not dismiss such action, but shall give judgment and distribute the property of such corporation as provided in section 5779 of the Revised Codes.

#### Emergency.

§ 2. Whereas, an emergency exists in that there is no provision of law for enforcing the forfeiture provided in chapter 73 of the Laws of 1897; therefore, this act shall take effect and be in force from and after its passage and approval.

See Anno. Corp. L., N. Dak., p. 36, Act 1, which is ch. 73 of L. 1897. See id., p. 30, § 5779.







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**OHIO.**

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# OHIO.

(Legislature did not meet in 1890.)

## DECISIONS.

(Include 54 N. E. Rep. 604.)

### Formation of corporation; fraud against creditors.

In contemplation of law a corporation is a legal entity, an ideal person, separate from the real persons who compose it. This fiction is, however, limited to the uses and purposes for which it was adopted,—convenience in the transaction of business and in suing and being sued in its corporate name, and the continuance of its rights and liabilities, unaffected by changes in its corporate members. But the fiction cannot be abused. A corporation cannot be formed for the purpose of accomplishing a fraud or other illegal act under the disguise of the fiction; and when this is made to appear, the fiction will be disregarded by the courts, and the acts of the real parties dealt with as though no such corporation had been formed, on the ground that fraud vitiates everything into which it enters, including the most solemn acts of men.

When a failing debtor forms a corporation, composed of himself and certain members of his family, he taking substantially all the stock, and at once conveys all his property to the corporation in exchange for the stock by him taken, and for no other consideration; and immediately places all his stock, except one share, with certain of his creditors, who have knowledge of the facts, as collateral security to their claims; and, as president and general manager, retains control of the property and manages it for his own use and benefit,—such a conveyance is a fraud on his other creditors and may be set aside by a court at their suit, and the property administered for the benefit of all his creditors. The good faith of the parties to such a transaction must be determined by its legal effects on the rights of others. If its legal effect works a fraud on their rights, the finding of a court that the parties acted in good faith is simply an erroneous conclusion of law from the facts. First Nat. Bank v. F. C. Trebein Co., 59 Ohio St. 316; s. c., 52 N. E. Rep. 834.

### Amendment of charter.

Where a corporation organized under the laws of this State to manufacture and

furnish gas to light the streets and public and private buildings of a municipal corporation amends its charter so as to authorize it to employ electricity in connection with gas for lighting purposes, such additional powers should not be deemed to change substantially the original purpose of its organization, and is, therefore, authorized by Rev. Stats., § 3238a (Anno. Corp. Laws., Ohio, p. 16), to so amend its charter. Picard v. Hughey, 58 Ohio St. 577; s. c., 51 N. E. Rep. 133.

### Ultra vires.

An institution incorporated for the purpose of "education of suitable persons in the art and science of curing diseases by the use of air, baths, electricity, heat, magnetism, massage, and all other resources of nature" does not offend against the law of its creation by imparting instruction concerning the administrating of drugs. State ex rel. Atty.-Gen'l v. Hygeia Med. College, 54 N. E. Rep. 86.

### Implied powers; ultra vires.

The implied powers which a corporation has in order to carry into effect those expressly granted, and to accomplish the purposes of its creation, are not limited to such as are indispensable for these purposes, but comprise all that are necessary, in the sense of appropriate, convenient and suitable, including the right of reasonable choice of means to be employed. Acts of a corporation which, if standing alone, or engaged in as a business, would be beyond its implied powers, are not necessarily ultra vires when they are incidental to, or form part of, an entire transaction, that, in its general scope, is within the corporate purpose. The validity of such a transaction is to be determined from its general character considered as a whole, rather than by segregation into individual parts, and each regarded as distinct from the other. Central Ohio Nat. Gas & Fuel Co. v. Capital City Dairy Co., 53 N. E. Rep. 911.

Where a corporation formed for the purpose of manufacturing and dealing in a particular line of goods, instead of incurring

## Decisions.

the expense and delay incident to the construction of a new manufacturing plant, and building up of an independent business, in good faith, with a view of promoting the interests of the corporation, chooses to purchase of an existing partnership engaged in a like business, its established plant and assets, including its outstanding claims, among which was one for damages to the property caused by another's negligence, the corporation acquires a valid title to the claim for damages, as against the party liable, and may maintain an action thereon. *Id.*

**Action to enforce stockholders' liability; parties.**

In an action by a creditor of a corporation in his own behalf, and in behalf of all the other creditors, against the stockholders to collect the statutory liability, it is not necessary to make the other creditors parties to the action, either in the court of common

pleas, or in a higher court on appeal, or on error. In such cases the action is presented by the plaintiff for the common benefit of all the creditors, for the creation of a fund for pro rata distribution among them; and whatever the plaintiff does in good faith in that behalf inures to the common benefit of them all, and binds all. *Herrick v. Wardwell*, 58 Ohio St. 294; *s. c.*, 50 N. E. Rep. 903.

**What stockholders liable.**

The stockholders of a corporation whose names appear on the stock book, or, in the absence of such book, on stubs of stock certificates, as holders of stock, are subject to a stockholder's liability for debts incurred by the corporation while such names are allowed to so remain. To avoid such liability it must appear on the stock book in the one case, or on the stub of the stock certificate in the other, that the stock has been transferred to some one else. *Id.*





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**OREGON.**

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# OREGON.

## LAWS OF 1899.

### Purchase and Sale of Goods in Bulk.

AN ACT to regulate the purchase, sale and transfer of stocks of goods, wares and merchandise in bulk.

Section 1. It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares or merchandise in bulk, for cash or on credit, before paying or delivering to the vendor any part of the purchase price therefor, or any promissory note or other evidence of indebtedness therefor, to demand and receive from the vendor thereof, and if the vendor be a corporation, then from the managing officer or agent thereof, a written statement under oath, of the names and addresses of all the creditors of said vendor, together with the amount of indebtedness due or owing, or to become due or owing, by said vendor to each of such creditors; and it shall be the duty of such vendor to furnish such statement.

§ 2. Whenever any person shall purchase any stock of goods, wares or merchandise in bulk, and shall pay the purchase price or any part thereof, or execute or deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said purchase price or any part thereof, without having first demanded and received from said

vendor the statement under oath, mentioned in section 1 of this act, such sale or transfer shall, as to any and all creditors of the vendor, be conclusively presumed to be fraudulent.

§ 3. Any vendor of a stock of goods, wares or merchandise in bulk, who shall knowingly or wilfully make or deliver, or cause to be made or delivered, any false statement, or any statement of which any material portion is false, or shall fail to include the names of all of his creditors in any such statement as is required in section 1 of this act, shall be deemed guilty of perjury, and upon conviction thereof shall be punished accordingly.

§ 4. Any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of the business or trade of the vendor — or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed to one or more persons — shall be deemed a sale or transfer in bulk, in contemplation of this act; provided, that nothing contained in this act shall apply to sales by executors, administrators, receivers, or any public officer acting under judicial process.

(Approved February 24, 1899.)

## DECISIONS.

(Include 58 Pac. Rep. 192.)

### Ultra vires acts.

On an issue whether an accommodation note was ultra vires, the production of the note, with the indorsement of the payee, does not shift on the corporation the burden of showing its want of authority, where the evidence of the payee also discloses the character of the indorsement. *Carney v. Duniway*, Sup. Ct. Or., 57 Pac. Rep. 192 (1899).

### Stockholders.

A stockholder who is not an officer of a corporation on whom its management de-

volves, is not personally responsible for its tortious acts. *Poley v. Lacert*, Sup. Ct. Or., 58 Pac. Rep. 37 (1899).

### Insolvency; sale of property; purchase by directors.

Sale of corporate real property of insolvent corporation to a director. Held, that a director to whom the corporation was indebted may purchase at sale. *Patterson v. Portland Smelting & Refining Works*, Sup. Ct. Or., 56 Pac. Rep. 407 (1899). What constitutes sufficient effort on part of directors to dispose of property at private sale before resorting to public sale. *Id.* What consti-

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Decisions.

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tutes sufficient advertisement of sale. *Id.* Where corporate property is purchased by directors who are creditors, stockholders cannot insist that cash be paid, but the purchase money may be credited on the indebtedness. *Id.* Where stockholders confer on directors the power of disposing of corporate property, the directors may delegate to the president and secretary purely ministerial duties connected with the sale. *Id.*

A fraudulent purchase by a director is not ground for the annulment of his election as director. *Stanley v. Luse*, Sup. Ct. Or., 58 Pac. Rep. 75 (1899). No ratification can be inferred where minority stockholders immediately object to a purchase by the directors, and in reasonable time file a suit to set it aside. *Id.* The fact that the owners of a majority of the stock are known to favor a purchase by the directors, does not amount to a ratification of that purchase. *Id.*

**Receivers.**

The appointment of a receiver for an insolvent corporation, without the pendency of a suit, on a direct application by a stockholder, under Hill's Annotated Laws, section 1061, is not subject to collateral attack. *McNary v. Bush*, Sup. Ct. Or., 56 Pac. Rep. 646 (1899).

When receivers can be appointed. *Anno. Corp. L.*, Or., p. 10, § 1061.

**Service of process.**

Under Hill's Annotated Laws, section 55, service on the president of a corporation in a county other than that in which the action was instituted, is valid, though the return does not show that no representative of the corporation could be found in the county where the action was begun. *Bailey v. Malheur & H. L. Irr. Co.*, Sup. Ct. Or., 57 Pac. Rep. 910 (1899).

See *Anno. Corp. L.*, p. 7, § 55.





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PENNSYLVANIA.

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# PENNSYLVANIA.

## LAWS OF 1899.

### Act No. 66.

#### Taxation of Express Companies; Examination of Books.

A SUPPLEMENT to an act, entitled "An act to provide revenue by taxation," approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine, amending and extending the provisions thereof.

Section 1. Be it enacted, etc. That section twelve of the act of June seventh, one thousand eight hundred and seventy-nine, entitled "An act to provide revenue by taxation," which reads as follows:

"§ 12. That the auditor-general and State treasurer, or any agent appointed by them, or either of them, are hereby authorized to examine the books and papers of any corporation, institution, company, or limited partnership made taxable by this act, to verify the accuracy of any return made under the provisions of this or any other act of assembly," shall be amended to read as follows:

That the auditor-general and State treasurer, or any agent appointed in writing by them, or either of them, are hereby authorized to examine the books and papers of any corporation, institution, company, or association, or limited partnership made taxable by this act, or any of its supplements, to verify the accuracy of any return made under the provisions of this or any other act of assembly.

§ 2. Every corporation, limited partnership, joint-stock association, partnership, firm or association of individuals, incorporated or unincorporated, engaged in the business commonly known as express business, shall pay to the State treasurer, for the use of the commonwealth, a tax of eight mills upon the amount of their gross receipts from express business done wholly within this State, the said tax shall be paid semi-annually upon the last days of January and July in each year; and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer, or other proper officer of the said corporation, limited partnership, joint-stock association, partnership, firm or association of individuals, to transmit to the auditor-general a statement, under oath or affirmation, of the amount of gross receipts of the said corporation, limited part-

nership, joint-stock association, partnership, firm, or association of individuals, incorporated or unincorporated, derived from all sources, and of the gross receipts from business done wholly within the State, during the preceding six months ending upon the first days of January and July in each year; and if any such corporation, limited partnership, joint-stock association, partnership, firm or association of individuals, incorporated or unincorporated, shall neglect or refuse for a period of thirty days after such tax becomes due to make said returns, or to pay the said tax, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the commonwealth as other taxes are recoverable by law. No other tax upon express receipts or upon the privilege of transacting express business, shall be collected without further authority of law to be hereafter enacted: Providing, That this act shall not be construed to repeal or take the place of the tax upon capital stock now imposed by law; but the tax on the gross receipts hereby imposed shall be in addition to the tax on capital stock imposed by existing law upon any of the corporations, companies or associations hereby taxed.

§ 3. All acts or parts of acts inconsistent herewith are hereby repealed. (Approved the 28th day of April, A. D., 1899.)

### Act No. 93.

#### Enabling Certain Corporations to File Articles; Effect of Filing.

A SUPPLEMENT to an act to provide for the incorporation and regulation of motor power companies for operating passenger railways by cables, electrical or other means," approved the twenty-second day of March, Anno Domini, one thousand eight hundred and eighty-seven, to provide that companies chartered thereunder, which did not file the original certificate with all of its indorsements in the office for recording deeds in and for the proper county, may within thirty days from the passage of this act be allowed to do so, with the same effect as if it had been filed as soon as letters-patent were issued.

Section 1. Be it enacted, etc., That any corporation to which letters-patent

## Privilege tax; decisions.

may have been issued under the act of assembly, of the twenty-second day of March, Anno Domini, one thousand eight hundred and eighty-seven, whose original certificate with all of its indorsements has not been recorded in the office for recording deeds in and for the proper county, as required by the second section of the said act of assembly, may at any time within thirty days from the passage of this act have the said certificate recorded in the office for recording deeds in and for the proper county, and the recording of the same shall have the same effect as if it had been recorded immediately after letters-patent were issued, and no act of the said corporation shall be deemed invalid or void by reason of the failure to so record the original certificate before it did any corporate act or thing. (Approved the 28th day of April, A. D., 1899.)

## Act No. 120.

## Privilege Tax; Increase of Capital.

AN ACT to provide for the payment of bonus on charters, and upon the authorized increase of the capital stock of certain corporations, and authorizing corporations to increase their capital stock for corporate purposes.

Section 1. Be it enacted, etc., That all corporations hereafter created under any general or special law of this commonwealth, except building and loan associations, and excepting all corporations named in the first class of section two of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four, shall pay to the State treasurer, for the use of the common-

wealth, a bonus of one-third of one per centum upon the amount of the capital stock which said company is authorized to have, and a like bonus on any subsequent authorized increase thereof, and a like bonus shall be paid by all such companies heretofore incorporated upon any increase of their capital stock hereafter authorized. And no company as aforesaid shall have or exercise any corporate powers until the said bonus is paid, and the governor shall not issue letters-patent to any company, until he is satisfied that the said bonus has been paid to the State treasurer, and no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges, until said bonus has been paid. The secretary of the commonwealth shall not permit the filing in his office of any proceedings for increase of capital stock until he is satisfied that the said bonus upon said authorized increase has been paid to the State treasurer.

§ 2. That any corporation created by special or general law shall, notwithstanding any limitation upon the amount of its capital stock by such special or general act, have authority, with the consent of the persons holding the larger amount in value of its stock, to increase its capital stock to such an amount, in the aggregate, as it shall deem necessary to accomplish and carry on and enlarge the objects and purposes of its incorporation, such increase may be made at once or from time to time, as the stockholders aforesaid shall determine: Provided, That this section shall not apply to corporations organized for the purpose of carrying on the business of brewing or distilling of malt or other liquors.

§ 3. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed. (Approved the 3d day of May, A. D., 1899.)

## DECISIONS.

(Include 44 Atl. Rep., p. 144.)

## Organization of corporation; money advanced for stock.

Where plaintiff advanced money for stock in a company to be organized by defendants, the company must be organized within a reasonable time or the money refunded. Where defendants, in consideration of money advanced by plaintiff, agreed to give him stock in a company to be formed, their want of success in the formation of the company is no defense in an action to recover the money; nor is it a defense that

the money was used in the development of patents to belong to the company, and for other expenses incurred in the attempted organization. Hudson v. West, 189 Penn. St. 491; 42 Atl. Rep. 190.

## Restoration of members.

Courts may compel by mandamus the restoration of a member expelled from a corporation, organized for the mutual protection of its members, and having a surplus fund in its treasury. Two members of a

## Decisions.

mutual protective union issued a manifesto stating that its management was unsatisfactory, and sent copies to other members, inviting them to attend an open meeting to discuss matters affecting the interests of the union. It was held that where the charter of the association contained no power of expulsion, the issuance of such manifesto was not ground for expulsion. *Weiss v. Mus. Mut. Protective Union*, 189 Penn. St. 446; s. c., 42 Atl. Rep. 118.

**Ultra vires.**

A corporation cannot raise the question of ultra vires in the making of a mortgage by it, where it assumed to have the authority, received the money and applied it to corporate purposes. *Union Trust Co. v. Mercantile Library Hall Co.*, 189 Penn. St. 263; s. c., 42 Atl. Rep. 129.

**Power to issue capital stock.**

Where a right to issue capital stock is claimed, the authority to issue the stock must be found in the charter. It is settled law that the act of increasing or decreasing the capital stock of a corporation without specific charter power to do so, is a void act, because it is ultra vires. This being so a corporation cannot issue capital stock where no power exists by legislative enactment. The power to create corporate capital stock is a legislative function, and in any given case, in order that such stock may have a legal existence, the function must be exercised. *Cooke v. Marshall*, 43 Atl. Rep. 314.

**Overissue of stock; laches.**

Plaintiff, who owned a charter for a bridge, made an agreement with the defendant, under which the latter was to organize a company to build the bridge, and issue \$80,000 of preferred stock, of which the plaintiff was to receive \$15,000, and as much common stock as should be necessary to complete the bridge. It was held that there was no such knowledge of the operations and participation therein by plaintiff as would estop him from complaining of an overissue of stock and bonds by the defendant. Where the holder of a portion of the preferred stock fails to complain of such overissue for nearly six years after knowledge of such fact, his right to have the excessive stock cancelled is barred by laches. *Jutte v. Hutchinson*, 189 Penn. St. 218; s. c., 42 Atl. Rep. 123.

**Action by bondholder against corporation.**

Where there is nothing in a bond of a corporation prohibiting an individual holder from bringing suit upon it, he may maintain such suit, although the bond in common with others is secured by a mortgage given to a trustee, which recites that there shall be no preference as to the various bonds secured. The fact that a mortgage is given by a cor-

poration to a trustee to secure bonds of the company, while it prevents a seizure of the mortgaged property in a suit by an individual bondholder, does not deprive him of the right to a general judgment against the company, and, therefore, a judgment in such a suit need not recite that execution thereunder is limited to property not covered by the mortgage. *Western Penn. Hospital v. Merc. Library Hall Co.*, 189 Penn. St. 269; s. c., 42 Atl. Rep. 183.

**Director, when not to contract.**

Authority to bind the corporation by contract was vested, by a resolution of the corporation, in the president thereof, or in his absence, in the vice-president. It was not within the power of a single director to exercise the power so vested in designated officials. *Gaynor v. Williamsport & N. B. R. Co.*, 189 Penn. St. 5; s. c., 41 Atl. Rep. 978.

**Ratification of acts of directors.**

Though two of the five directors of a corporation did not have timely notice of a meeting at which an assignment of its interests in insurance policies on its property was authorized, yet, none of its officers or directors having subsequently made objection thereto, their acquiescence must be accepted as a ratification of the assignment. *Moller v. Keystone Fibre Co.*, 187 Penn. St. 553; s. c., 41 Atl. Rep. 478.

**Insolvency; preferences.**

A corporation as well as an individual may prefer one creditor to another if the preference is honestly made to secure or satisfy a bona fide debt. A director of an insolvent corporation cannot, by his own vote, obtain a preference for his claim against the corporation over claims of other creditors. The attempt of a director of an insolvent corporation to obtain a preference is not fatal to preferences theretofore lawfully given him by the corporation. *Moller v. Keystone Fibre Co.*, 187 Penn. St. 553; s. c., 41 Atl. Rep. 478.

**Insolvent corporations; fraudulent security.**

A bond given by an insolvent corporation to a creditor for a penal sum, as security for such sums as may be owing to the creditor from time to time, and conditional that the debtor should pay such sums as should be owing, and in default thereof authorizing judgment to be entered for any sum that may be due or owing the creditor, is not security against any contingent liability; and inclusion in the judgment entered therein of the amount of such notes not then paid, and in which the creditor was at most only contingently liable, makes out a *prima facie* case of fraud. *Creighton v. Scranton Lace Curtain Co.*, 43 Atl. Rep. 134.

## Decisions.

**Foreign corporation; what constitutes doing business in State.**

A corporation which had no office or place of business in the State and no part of its capital invested here, whose agent came into the State, and secured an order for machinery to be delivered in the State, which was shipped from its place of business in another State, is not doing business within the State, so as to be precluded from suing in the State on such contract under Act April 22, 1874 (R. L. 108), (Anno. Corp. Laws Penn., p. 51), prohibiting any foreign corporation from doing business in this State until it shall have established an office and appointed an agent for the transaction of its business. *Wolf Dryer Co. v. Begler*, 43 Atl. Rep. 1092. See also in this connection *Del. & Hud. C. Co. v. Mahlenbrock*, 43 Atl. Rep. 978.

**Dissolution of corporation.**

A committee appointed by stockholders to effect a dissolution of the company, exchange its property for stock in another company, which had a mere speculative value, and to distribute the stock or proceeds thereof, is not liable to the stockholders for a mistake in judgment in holding the stock until it had depreciated in value. Such a committee has no authority to distribute such proceeds until dissolution as prescribed by law, with an exhibition of accounts, and an opportunity for creditors to present their claims. Whether the committee ought, in the exercise of common business prudence, to have turned the stock received into money pending dissolution, is for the jury. *In re Lincoln Market Co.*, 190 Penn. St. 124; s. c., 42 Atl. Rep. 538.





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## RHODE ISLAND.

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# RHODE ISLAND.

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## CONSTITUTION OF 1899.

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### **ARTICLE I.**

#### **Declaration of Certain Constitutional Rights and Principles.**

§ 11. No ex post facto law, or law impairing the obligation of contracts, shall be passed.

### **ARTICLE IV.**

#### **Of the Legislative Power.**

§ 15. No corporation shall be created with

the power to exercise the right of eminent domain, or to acquire franchises in the streets and highways of towns and cities, except by special act of the general assembly upon a petition for the same, the pendency whereof shall be notified as may be required by law; nor shall either of said powers be granted to any person or corporation, except in the same manner.

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Dissolution; decisions.

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## LAWS OF 1899.

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**CHAPTER 655.****Dissolution.**

**AN ACT** in amendment of section 27 of chapter 177 of the general laws, entitled "Provisions respecting corporations in general."

Section 1. Section 27 of chapter 177 of the general laws is hereby amended to read as follows:

"§ 27. Whenever any corporation is insolvent, or whenever by reason of the fraud, negligence, misconduct, or continued absence from the State of the executive officers of any corporation whose stockholders have neglected, refused or omitted for any unreasonable time to hold meetings or attend to its concerns, the estate and effects of such corporation are being misapplied or are in danger of being wasted or lost, or whenever any corporation has done or omit-

ted to do any act, which act or omission is ground for the forfeiture of its charter at law, or whenever a majority in interest of the members of a corporation having a capital stock, or a majority of the members of a corporation having no capital stock, shall have voted to dissolve said corporation and to wind up its affairs, the appellate division of the supreme court may, upon the petition of any stockholder or creditor of such corporation, and upon such reasonable notice as the court may prescribe, decree a dissolution of such corporation and appoint a receiver of its estate and effects, or may decree such dissolution without appointing a receiver, or may appoint such receiver without decreeing a dissolution."

§ 2. This act shall take effect from and after its passage, and all acts and parts of acts inconsistent herewith are hereby repealed.

See Anno. Corp. L., R. I., p. 13, § 27.

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## DECISIONS.

(Include 44 Atl. Rep., Oct. 4, 1899.)

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**Use of corporate name; action to restrain.**

A corporation manufactured Armington & Sims engines under the name of the Armington & Sims Engine Co. The patents on such engines having expired, another corporation subsequently engaged in the manufacture thereof, and had the right to so manufacture them and describe them as Armington & Sims engines. But such a corporation has not the right to use the corporate name "Armington & Sims Company," and hold itself out as the successor of the "Armington & Sims Engine Company," which is still in existence, although there is no intention to deceive, and the latter corporation is not at the time in business, and there may be no present damages. The purchase of the manufacturing plant, machinery and materials of a corporation does not give the purchaser the right to use as its name, the name of such corporation. *Armington v. Palmer*, 42 Atl. Rep. 308.

A resolution passed by a meeting of a corporation, authorizing one who has already purchased its plant to use its name, being

without consideration, is not binding on those not voting therefor; the majority not being authorized to give away the rights of the minority. *Id.*

In the absence of statutory provisions to the contrary, the State is not a necessary party, but suit may be maintained by a private person to enjoin a corporation from wrongful use of its corporate name. An injunction restraining a corporation from using its corporate name does not practically annul it, authority to choose another name being given it by Gen. Laws, ch. 176, § 7 (Anno. Corp. Laws, R. I., p. 9), relating to an increase of stock, and providing that its articles of agreement may be amended in any other particular, except as provided in section 8, relating to a decrease of stock. *Id.*

**Liability of stockholder; foreign judgments.**

The mere opinion of the highest court of one State that the statutory liability of stockholders for corporate debts is a con-

## Decisions.

tractual one, on which an action may be brought in another State, is not a judgment to which full faith and credit must be given under the Federal Constitution, so as to compel the courts of the latter State to allow an action to be brought to enforce the same. Hancock Nat. Bank v. Farnum, 40 Atl. Rep. 341.

Kansas Const., art. 12, § 2 (Anno. Corp. L., Kan., p. 5), providing that dues from corporations shall be secured by individual liability of stockholders to an additional amount equal to the stock owned, and by such other means as shall be provided by law, is not self-executing, and does not create a liability. *Id.*

Under the General Statutes of Kansas, ch. 23, art. 4, par. 1192, providing that when no corporate property can be found on which to levy an execution, execution may issue against any stockholder to an amount equal to the amount of the stock owned, the liability of a stockholder is not contractual, so as to allow an action to enforce the same to be maintained in another State. *Id.*

**Receivers of foreign corporation.**

A receiver of a corporation, empowered, by a decree appointing him, to sue for and collect its assets, may sue in his own name a chose of action payable to the corporation. An ancillary receiver of a foreign corporation may be appointed in the State under the general power of a court of equity. *Evans v. Pease*, 42 Atl. Rep. 506.

**By-laws; when not to restrict transfer of stock.**

Revised Statutes of Maine, ch. 46, § 2 (Anno. Corp. L., Me., p. 11), authorizing corporations to make by-laws not inconsistent with the laws of the State, does not authorize a by-law requiring stockholders, before

selling their stock, to first offer it to the corporation, since the corporation cannot, in the absence of express authority, restrict the right of a stockholder to dispose of his stock. The assignee of shares is not bound by a corporate by-law passed without authority of statute, to which his assignor assented, such assent being a personal contract with the assignor and enforceable against him only. *Ireland v. Globe Milling Co.*, 41 Atl. Rep. 258.

**Sale of corporation's business.**

Where a sale of a corporation's business is necessary because no longer profitable, a private sale agreed to by a majority of the stockholders will not be enjoined at the suit of a minority stockholder because he considers the price inadequate, where there is no claim of unfairness, oppression or fraud, and nothing to show that more could be expected from an auction sale. *Phillips v. Providence Steam-Engine Co.*, 43 Atl. Rep. 598.

**Corporate mortgages; validity.**

Violation of a charter provision that the corporation shall make no mortgage without consent of three-fourths of the stockholders does not make the mortgage void, but only voidable. The stockholders cannot question such a mortgage, where it was given in compromise of a suit against the corporation, and there was no bad faith, and the stockholders present at the next annual meeting, although not representing three-fourths of the stock, approved the records of the special meeting which attempted to authorize the mortgage, and the corporation had paid an installment of interest thereon, and a year and a half had elapsed without action being taken by any stockholder. *Bishop v. Kent & Stanley Co.*, 41 Atl. Rep. 255.







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SOUTH CAROLINA.

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# SOUTH CAROLINA.

## LAWS OF 1899.

### No. 26.

#### Service on Foreign Corporation.

AN ACT to amend section 155 of the Code of Civil Procedure, as the same relates to the service of summons upon foreign corporations, as follows:

§ 155. The summons shall be served by delivering a copy thereof as follows: If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, a director or agent thereof, service upon any person occupying an office or room in any railroad station, and attending to and transacting therein any business of any railroad, shall be deemed service upon the corporation under the charter of which such railroad is authorized by law; and such person shall be deemed the agent of said corporation, notwithstanding he may claim to be the agent of any other person or corporation, claiming to operate said railroad by virtue of any lease, contract or agreement. Such service can be made in respect to a foreign corporation only when it has property within the State, or the cause of action arose therein, or where such service shall be made in this State personally upon the president, cashier, treasurer, attorney or secretary or any agent thereof. (Approved the 2d day of March, A. D. 1899.)

See Anno. Corp. L., S. C., p. 28.

### No. 38.

#### Increase and Decrease of Stock.

AN ACT to provide for the increase and decrease of the capital stock of corporations in this State, except railroad, railway, tramway, turnpike and canal corporations.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That any corporation heretofore or hereafter created or organized under any general or special act of the legislature of this State, or created or organized under any general act of the legislature of this State, the charter of which has been amended by special act of the legislature, except railroad, railway, tramway, turnpike and canal corporations, may at any time and from time to time increase or decrease its capital stock as hereinafter provided.

#### Increase of capital stock.

§ 2. That the capital stock of any such corporation as aforesaid may be increased as follows: Whenever by resolution of the board of directors an increase of the capital stock of the corporation is determined upon, a meeting of the stockholders shall be called to consider such resolution by a notice published at least once a week for four successive weeks previous to the date fixed in such notice for such meeting, in some newspaper published in the county where the corporation has its principal place of business, which notice shall state the time and place of meeting, the purpose for which it is called, and the maximum amount to which it is proposed the capital stock shall be increased. The vote of two-thirds of the stock of the corporation shall be necessary to make an increase, which increase may be so made to any amount not exceeding the maximum amount stated in the said notice of the meeting of stockholders. The board of directors shall certify the resolution of the stockholders to the secretary of State, and that all requirements of this act as to such increase of capital stock have been complied with. In case the corporation so increasing its capital stock is incorporated under a general law, the board of directors shall likewise return to the secretary of State the original charter or certificate of incorporation for the indorsement herein mentioned. The secretary of State shall thereupon record the said certificate of the board of directors, and shall likewise indorse upon the charter or certificate of incorporation a certificate of the increase of the capital stock, and shall forthwith return the charter or certificate of incorporation with such indorsement thereon to the board of directors; and in cases where the law under which such corporation is created or organized requires the charter or certificate of incorporation to be recorded in the office of the register of mesne conveyances or clerk of court, the certificate of such increase of the capital stock, indorsed by the secretary of State on the charter or certificate of incorporation as hereinbefore required, shall be recorded across the face of the record of the charter or certificate of incorporation in the office of the register of mesne conveyances or clerk

## Stock, increase or decrease.

of court, where the charter or certificate of the incorporation is required to be recorded, and the increase of the capital stock of such corporation shall be authorized when the certificate is lodged for record in said office. But in cases where the corporation has been created or organized under a special act of the legislature, or where such corporation has been created or organized under a general law and its charter has been amended by a special act, the secretary of State, upon receipt of the certificate of the board of directors of the resolution of the stockholders aforesaid, and that all the requirements of this act have been complied with as aforesaid, shall forthwith issue to said corporation a certificate of the increase of the capital stock, which certificate shall be recorded in the office of register of mesne conveyances or of the clerk of court of the county in which said corporation has its principal place of business; and the increase of the capital stock of such corporation shall be authorized when such certificate is lodged for record in said office. In cases where the capital stock is increased as by this act provided, the stockholder or stockholders thereof registered on the books of said corporation at the time when such increase of stock shall be authorized, shall have the preference of taking such increase of stock in proportion to the amount of the stock he, she or they may then own; but if such stockholder or stockholders shall not avail himself, herself, or themselves of such privilege within ten days after the lodgment for record of such certificate of increase of the capital stock, the board of directors may dispose of the said increased capital stock as they may deem best at its market value in money or property. That the said corporation so increasing its capital stock shall pay to the secretary of State the fees graded as follows: \$5.00 for any increase of capital stock of \$5,000.00 or less; \$10.00 for more than \$5,000.00, up to and including \$25,000.00; \$15.00 for more than \$25,000.00, up to and including \$50,000.00; \$20.00 for more than \$50,000.00, up to and including \$100,000.00; \$25.00 for more than \$100,000.00, up to and including \$250,000.00; and \$1.00 additional for each \$10,000.00 increase or fraction thereof above \$250,000.00, which fees shall accompany the certificate of the board of directors.

**Decrease of capital stock.**

§ 3. (a) When in the judgment of the board of directors of any corporation mentioned in the first section of this act, the actual capital stock of such corporation has from any cause been impaired and is less than the parvalue of the shares representing the same, in such cases the nominal capital may be reduced to what in the judgment of the board of directors is the actual value of the stock of the corporation. When the capital is thus reduced, the outstanding

certificates shall be called in, and certificates of the reduced capital apportioned among the stockholders according to their respective holdings; Provided, however, That such reduction shall in no way impair the liability of the stockholders to creditors upon claims against the corporation existing at the time of such reduction. (b) When a corporation owing no debts, desires to reduce its capital to a given amount, and to distribute among its stockholders its capital in excess of such amount, in such case the outstanding certificates shall be called in, and the surplus capital and certificates for the reduced stock shall be apportioned among the stockholders according to their respective holdings. (c) The following provisions shall govern a reduction of capital in either of the cases mentioned: Should any stockholder or stockholders fail to surrender his, her or their certificate or certificates for conversion into certificates of the reduced stock, such certificate or certificates shall after such reduction represent only the amount of stock in the reduced capital to which the holder or holders would be entitled. Should the interest of any stockholder require the issue of a fractional part of a share, such fractional part of a share may be embodied in a certificate for one or more full shares, or when necessary, a separate certificate issued therefor. Whenever by resolution of the board of directors, a reduction of capital stock is determined upon, a meeting of the stockholders shall be called to consider such resolution by a notice published at least once a week for four successive weeks previous to the date fixed in such notice for such meeting, in some newspaper published in the county where the corporation has its principal place of business, which notice shall state the time and place of meeting, the purpose for which it is called, and the minimum amount to which it is proposed that the capital shall be reduced. The vote of two-thirds of the stock shall be necessary to make a reduction, which reduction may be made to any amount, not less than the amount stated in said notice of the meeting of stockholders. The board of directors shall certify the resolution of the stockholders to the secretary of State, and that all the requirements of this act in relation to such decrease of capital stock have been complied with; and where capital is to be distributed, shall further certify that the corporation owes no debts. In case the corporation so decreasing its capital stock is incorporated under a general law, the board of directors shall likewise return to the secretary of State the original charter or certificate of incorporation for the indorsement herein mentioned; the secretary of State shall thereupon record the said certificates of the board of directors, and shall likewise indorse upon the charter or certificate of incorporation a certificate of the decrease or reduction of capital stock, and shall forth-

## SOUTH CAROLINA.

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### Wages; employment of women.

with return the charter or certificate of incorporation with such indorsement thereon, to the board of directors; and in cases where the law under which such corporation is created or organized, requires the charter or certificate of incorporation to be recorded in the office of the register of mesne conveyances or clerk of court, the certificate of such decrease or reduction of capital stock, indorsed by the secretary of State on the charter or certificate of incorporation as hereinbefore required, shall be recorded across the face of the record of the charter or certificate of incorporation, in the office of the register of mesne conveyances or clerk of court, where the charter or certificate of incorporation is required to be recorded; and such decrease or reduction of capital stock shall be authorized when the certificate is lodged for record in said office. But in cases where the corporation has been created or organized under a general law, and its charter has been amended by a special act, the secretary of State, upon the receipt of the certificate of the board of directors of the resolution of the stockholders aforesaid, and that the requirements of this act have been complied with in relation to such decrease or reduction of capital stock, shall forthwith issue to said corporation a certificate of such decrease or reduction of capital stock, which certificate shall be recorded in the office of the register of mesne conveyances or the clerk of the court of the county in which said corporation has its principal place of business; and the said decrease or reduction of capital stock shall be authorized when such certificate is lodged for record in said office. That for the services required of him by this section of this act, there shall be paid to the secretary of State a fee of five dollars, which shall accompany the certificate of the board of directors.

§ 4. All fees received by the secretary of State under this act shall be turned over quarterly by him to the State treasurer.

§ 5. That any director who shall knowingly and willingly make or cause to be made any fraudulent misrepresentation in any certificate required by this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than two years, or both, in the discretion of the court.

§ 6. That the secretary of State shall annually prepare, cause to be printed, and submit to the general assembly a true abstract of all certificates for the increase or decrease of the capital stock of corporations issued by him under the provisions of this act; said abstract shall contain, under proper headings, the corporate name of the corporation, the date of its charter, its location, original amount of its capital stock, and such increase or decrease thereof, together with such remarks as he may deem necessary;

sary; said abstract shall be published as an appendix to the acts and joint resolutions of the session of the legislature to which such abstract is submitted; and the names of all corporations therein contained, stating whether the capital stock has been increased or decreased, shall be included in the index of said acts and joint resolutions.

§ 7. That all acts and parts of acts inconsistent with this act be, and they are hereby, repealed.

§ 8. That this act shall take effect immediately on its approval. (Approved the 1st day of March, A. D. 1899.)

See Anno. Corp. L., S. C., pp. 16, 19.

### No. 52.

#### Payment of Wages.

### AN ACT to promote prompt settlement of wages with discharged laborers.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That any corporation carrying on any business in this State in which laborers are employed, whose wages, under the business rules or custom of such corporation, are paid monthly on a fixed day beyond the end of the month in which the labor is performed, shall discharge any such laborer, the wages which have been earned by such discharged laborer shall become immediately due and payable. (Approved the 6th day of March, A. D. 1899.)

### No. 71.

#### Employment of Women.

### AN ACT to regulate the employment of women in mercantile establishments or any place where goods or wares or merchandise are offered for sale, and to provide seats for them, and to make it an offense to fail to do so.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, It shall be the duty of all employers of females in any mercantile establishment, or any place where goods or wares or merchandise are offered for sale, to provide and maintain chairs or stools, or other suitable seats, for the use of such female employes, to the number of one seat for every three females employed, and to permit the use of such seats by such employes, at reasonable times, to such an extent as may be requisite for the preservation of their health. And such employes shall be permitted to use the same, as above set forth, in front of the counter, table, desk or any fixture when the female employe for the use of whom said seat shall be kept and maintained is principally engaged in front of said counter, table, desk or fixture; and behind such counter, table, desk or fixtures when the female employe for the use of whom said seat shall be kept and maintained is principally engaged behind said counter, table, desk or fixture.

## Decisions.

§ 2. Any person who violates or omits to comply with any of the foregoing provisions of this act, or who suffers or permits any woman to stand, in violation of its provisions, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars for each offense.

## No. 72.

## Labor on Sunday.

AN ACT to further prevent working and laboring on Sunday.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That

on and after the approval of this act, in addition to the penalties prescribed against tradesmen, artificers, workmen and laborers who shall do or exercise any worldly labor, business or work of their ordinary calling upon the Lord's day (commonly called the Sabbath), or Sunday, or any part thereof, any corporation, company, firm or person who shall order, require or direct any work to be done in any machine shop, or shops, on Sunday, except in cases of emergency, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined in a sum not less than one hundred dollars and not more than five hundred dollars, for each offense. (Approved the 6th day of March, A. D. 1899.)

## DECISIONS.

(Include 33 S. E. Rep. 930.)

## General powers.

A corporation cannot interpose the plea of ultra vires to a contract, where it retains the benefits thereof. *Williamson v. Eastern Bldg. & Loan Assn. of Syracuse, N. Y.* (Sup. Ct., S. C.), 32 S. E. Rep. 765 (1899).

## Liability of stockholders.

Where a corporation is insolvent and in the hands of a receiver, the court will compel stockholders to pay assessments on their subscriptions, though the directors have not refused to enforce such payment. *Eiford v. Piedmont Land Imp. & Inv. Co.* (Sup. Ct., S. C.), 32 S. E. Rep. 758 (1899). A bona fide transfer of stock, entered on the books, relieves a stockholder from liability on his unpaid subscription. *Id.* Stockholders cannot set off their claims against the corporation in extinguishment of the amounts due by them upon their original subscription, where suit is brought therefor by the receiver, for the benefit of corporate creditors. *Id.*

Rehearing dismissed. 32 S. E. Rep. 897.

Where a corporation organized prior to 1895 has not complied with the act of 1896, section 10, so as to bring it within Constitution 1895, article 9, section 2, the liability of stockholders remains as it existed prior to the Constitution. *Lauraglenn Mills v. Ruff* (Sup. Ct., S. C.), 52 S. C. 448; 30 S. E. Rep. 587 (1898).

Under the statute of South Carolina, imposing an additional liability of 5 per cent. of the stock on the stockholders of banks, for the benefit of corporate creditors, an action by a creditor for the benefit of all, is enforceable in equity. *Parker v. Carolina Sav. Bank* (Sup. Ct., S. C.), 31 S. E. Rep. 673 (1899).

In such an action a stockholder cannot set off claims due from the bank against

his statutory liability, since his liability is to the creditors. *Id.* Under Revised Statutes, section 1529, providing that no transfers of stock shall be valid, except between the parties, until regularly entered on the books, a stockholder does not escape his statutory liability by transferring his stock without so entering it. *Id.*

Constitution 1868, article 12, section 6, does not prevent the legislature imposing increased liabilities on the stockholders of banks. *Id.*

## Action against directors by stockholder.

A complaint of a stockholder against directors for fraudulent disposition of corporate assets, showing facts from which it can be reasonably inferred that plaintiff could not get redress within the corporation, need not show an effort to obtain corporate action. *Stahn v. Catawba Mills* (Sup. Ct., S. C.), 31 S. E. Rep. 498 (1898).

## Pleading corporate existence.

In an action by or against a domestic corporation in which it is designated by a corporate name, the creation or existence of the corporation need not be alleged. *Parker v. Carolina Sav. Bk.* (Sup. Ct., S. C.), 31 S. E. Rep. 673 (1898).

## Receivers; insolvency.

Under Code, section 265, subdivision 4, authorizing the appointment of a receiver "when a corporation is insolvent or in imminent danger of insolvency," facts in particular case held not to justify appointment. *Miller v. Southern Land & Lumber Co.* (Sup. Ct., S. C.), 31 S. E. Rep. 281 (1898).

"Insolvency" discussed and defined. *Id.* See *Anno. Corp. L. S. C.*, p. 25, § 265.

## Decisions.

**Dissolution.**

A corporation is not ipso facto dissolved by an act of non-user or misuser, which is a cause of forfeiture, but the franchise remains in force until the forfeiture is declared in a direct judicial proceeding brought by the State against the corporation for that purpose, unless the legislature by unmistakable language indicates a different intent. *State ex rel. City Council of Spartanburg v. Spartanburg C. & G. R. Co.*, 51 S. C. 129; 28 S. E. Rep. 145 (1897).

**Foreign corporations.**

The passage of the Act of 1897 (Anno. Corp. L., S. C., p. 28), relating to foreign

corporations, did not repeal the provisions of the Code subjecting the property of foreign corporations to attachment. *Williamson v. Eastern Bldg. & Loan Assn. of Syracuse* (Sup. Ct., S. C.), 32 S. E. Rep. 765 (1899).

The provisions of section 1470 of the Revised Statutes (Anno. Corp. L., S. C., p. 12), providing for the winding up of the affairs within the State of a foreign corporation, do not give resident creditors the right to appropriate the assets within the State to the exclusion of foreign creditors. *Wilson v. Keels* (Sup. Ct., S. C.), 32 S. E. Rep. 702 (1899).







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SOUTH DAKOTA,

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# SOUTH DAKOTA.

## LAWS OF 1890.

### CHAPTER 56.

**Amendments of Articles of Incorporation.**  
**AN ACT** to authorize the amendment of articles of incorporations.

**Corporations may amend their articles of organization; general provisions.**

Section 1. (Thus am. by ch. 92, L. 1899.) That any corporation incorporated under the laws of the Territory of Dakota, or that may hereafter be incorporated under the laws of the State of South Dakota, may amend its articles of incorporation in the following particulars at any general meeting provided for in said articles of incorporation or in the by-laws of the corporation. It may change the corporate name, may change the corporate seal to conform with the change of name, may change the place where the principal business shall be transacted to any other place in this State, and may change the place of holding the meetings of said corporation to any other place within this State. The foregoing amendments can only be made by a vote of three-fourths of the share or stockholders, who shall represent at least two-thirds of the stock of the corporation.

**Notice must be given.**

Provided that it shall be unlawful to make either of the above-mentioned changes at any meeting, without due notice first having been given that a vote upon the proposition to make such changes will be taken at such meeting, such notice to be published at least three consecutive weeks in a newspaper printed at the place of principal business of the corporation and signed by the president and secretary.

**Certain corporations may amend at any time.**

Provided, further, that religious, educational and benevolent corporations organized

under the laws of the Territory of Dakota, or State of South Dakota may amend their articles of incorporation at any meeting of their trustees, regularly called, in such particulars as such trustees may deem necessary for the better accomplishment of the objects for which said corporations were created, and may also increase or decrease the number of their trustees; provided, that such amendments shall not in any way impair the obligation of existing contracts and may be made at any meeting of the board of trustees of such religious, educational or benevolent corporation, upon notice to each member of such board of trustees of the proposed amendment and the time when said amendment will be considered.

**Amended articles filed in the office of the secretary of State.**

§ 2. The articles of incorporation, as amended, shall be signed by the president and secretary of the corporation, who shall certify under the amended seal, that the provisions of section one of this act shall have been complied with. When so certified said amended articles shall be filed with the secretary of State, the same as provided for articles of incorporation, and from such filing shall be the legal articles corporate of the incorporation.

**Repeal.**

§ 3. Any part of any act in conflict with the provisions of this act is hereby repealed.

**Emergency declared.**

§ 4. Whereas, an emergency exists, this act shall take effect from and after its passage and approval.

(Approved February 20, 1890.)

See also Anno. Corp. L., S. Dak., p. 31, act 4.

## LAWS OF 1897.

**CHAPTER 94.****Relating to Monopolies and Trusts.**

**AN ACT** to enforce section twenty of article seventeen of the Constitution of the State of South Dakota.

**Monopolies and trusts defined.**

Section 1. That within the meaning of this act a trust or monopoly is a combination of capital, skill, or acts of two or more persons, firms, corporations or associations or persons; first, to create or carry out restrictions in trade; second, to limit the production or to increase or reduce the price of commodities; third, to prevent competition in the manufacture, transportation, sale or purchase of merchandise, produce or commodities; fourth, to fix any standard or figure whereby the price to the public shall be in any manner established or controlled. Provided, that nothing in this act shall be construed so as to include labor organizations.

**Unlawful to prevent competition.**

§ 2. That it shall be unlawful for any incorporated company, copartnership or association of persons in this State directly or otherwise to fix prices, limit the production or regulate the transportation of any product or commodity so as to obstruct or delay or prevent competition in such production or transportation or limit transportation of commodities or to fix prices therefor.

**Unlawful to combine.**

§ 3. That it shall be unlawful for any incorporated company, copartnership or association of persons in any other State to directly or otherwise combine or make any contract with any incorporated company, copartnership, association of person or persons in this State to combine or make any contract to fix prices, limit the production or (of) commodity or regulate the transportation directly or otherwise of any product or commodity so as to obstruct or prevent competition or limit transportation or to fix prices therefor.

**Violation; penalty.**

§ 4. Any person or persons, officer or servants of any company, copartnership or association of persons convicted of violating any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction

thereof for the first offense shall be fined not less than one thousand dollars, nor more than five thousand dollars, and upon conviction for the second offense not less than five thousand dollars nor more than ten thousand dollars.

**Fines; to whom paid.**

§ 5. All fines recovered under this act shall be paid, one-half to the person or persons aggrieved and the other half shall be paid into the county treasury of the county in which the conviction may be made to the credit of the general county fund of said county.

**Duty of State's attorney.**

§ 6. It shall be the special duty of the State's attorney of each county in this State upon the affidavit of any person or persons aggrieved, showing that any person or persons have violated any provisions of this act, to make complaint and cause the arrest of such person or persons and to prosecute him or them to conviction if proved to be guilty and it shall be the duty of the attorney-general of the State upon request of any State's attorney for any county to aid in the prosecution of actions under this act.

**Repeal.**

§ 7. That all acts or parts of acts in conflict with this act are hereby repealed.

The constitutional provision referred to in the title of this act was adopted at the general election of 1896, and added a new section to art. 17, as follows:

§ 20. Monopolies and trusts shall never be allowed in this State, and no incorporated company, copartnership or association of persons in this State shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic; through their stockholders or trustees or assigns of such stockholders or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation, or to establish excessive prices therefor.

The legislature shall pass laws for the enforcement of this section by adequate penalties and in the case of incorporated companies, if necessary for that purpose may, as a penalty, declare a forfeiture of their franchises.

## Taxation; listing.

## LAWS OF 1899.

## CHAPTER 40.

**Providing for the Assessment of All Taxable Property.**

AN ACT to secure the assessment of all taxable property, and to provide methods of enforcement of the same.

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**List of personal property to be made under oath.**

§ 7. Every person required by this act to list property, shall make out and deliver to the assessor, when required, a statement verified by oath of all the personal property in his possession or under his control and which by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as a guardian, parent, trustee, administrator, executor, receiver, accounting officer, partner, agent or factor, but no person shall be required to include in his statement any share or portion of the capital stock or property of any company or corporation, which such company is required to list and return as its capital and property for taxation in this State. It shall be the duty of the assessors in every town to require all persons giving in tax lists to sign, date and deliver to them a sworn statement upon said list, and the person called upon, or required by the assessor to list his property shall answer in writing over his signature the following interrogatories under oath:

Interrogatory 1. Are you, or were you, on the first day of May of the present year, the executor of the last will, or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or trustee of the property of any person, or the receiver of the property of any corporation, association or firm, or the agent or attorney or banker investing, loaning or otherwise controlling the money or property of any other person residing in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If you were, designate for whom you were or now are acting in such representative of (or) fiduciary capacity and if you were or are now acting under the authority of any particular court, name the court, and also to what court you report.

Interrogatory 2. Have you, before the first day of May of the present year, either personally or through the agency of others, caused all or any part of your taxable money or other property to be temporarily con-

verted, either by sale, borrowing, exchanges, or in any other manner, into bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you on or after the first day of May of the present year, and before you saw this interrogatory, pay back, return or exchange or sell back such property for the purpose aforesaid?

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted, or invested, and the kind and amount and value thereof. And the person, so answering and assessed, shall date and deliver a sworn statement upon said list of the following form:

STATE OF SOUTH DAKOTA, } ss.  
County of .....

I, ....., duly sworn say, to the best of my knowledge, information and belief, the foregoing statement contains a true, full and complete list of all the property held or belonging to me, and dogs owned or kept or harbored by me on the first day of April, including all personal property appertaining to merchandising, whether held in actual possession, or only having been purchased with a view to possession or profit, and all personal property appertaining to manufacturing, and all manufactured articles whether on hand, or owned by me. In all cases where I have been unable to exhibit certain classes of property to the assessor, such property has been fully and fairly described and its true condition and value represented. That I have in no case sought to mislead the assessor as to either quantity, quality or value of property, and that the deductions claimed from credits, are bona fide debts, for a consideration received, and do not consist in any parts in bonds, notes or obligations of any kind given to any insurance company on account of premium or policies, nor on account of any unpaid subscriptions to any literary, scientific, or charitable institution or society, nor on account of any subscription to or indebtedness payable on capital stock of any company, whether incorporated or unincorporated; and I further swear that since the first day of May of last year, I have not directly or indirectly converted any

## Decisions.

of my property temporarily for the purpose of evading the assessment thereof for taxes, into non-taxable property or securities of any kind. I further swear that I have to the best of my knowledge and judgment, valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained at private sale and not at forced or auction sale.

.....

Subscribed and sworn to before me,  
this ..... day of .....

.....

Assessor.

By ....., Deputy.

Any person signing and delivering to the assessor a false statement of the foregoing form shall be guilty of the crime of perjury, and subject to the punishment by law provided for this crime.

**Penalty for evading law.**

§ 8. If any person or corporation shall give a false or fraudulent list, schedule or statement required by this act, or shall wilfully fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable property which he is required to list under this act or shall temporarily convert any part of his property into property not taxable for the fraudulent purpose of preventing such property from being listed, and of evading the payment of taxes thereon, he or it shall be liable to a penalty of not less than fifty dollars nor more than five thousand dollars, to be recovered in any proper form of action in the name of the State of South Dakota, on the relation of the State's attorney. The assessor shall forthwith notify the State's attorney of such delinquency or offense, and he shall prosecute such offender to final judgment and

execution, and such fine when collected shall be paid into the county treasury for the use of the county, and the State's attorney shall receive ten per centum commission of all moneys so collected and paid in, and a docket fee of ten dollars, to be taxed and collected with costs in such actions.

**Refusal to make statement; penalty.**

§ 9. In every case where any person shall refuse to make out and deliver to the proper assessor the statement required under this act, or shall refuse to take and subscribe to any of the oaths or affirmations required by this act, the assessor shall proceed to ascertain the number of each description of the several enumerated articles of property and the value thereof and for this purpose he may examine on oath any person or persons whom he may suppose to have knowledge thereof, and such assessor shall make a note of such refusal in a column opposite the person's name, and the county auditor shall add to such valuation when returned by the assessor fifty per centum on the value so returned.

**Refusal to make oath or answer questions; penalty.**

§ 10. If any person required by the assessor to give evidence, as provided in the preceding section, or in any case when interrogated by the assessor as to any property real or personal, of himself or others, shall refuse to be sworn or affirm, or if having been sworn or affirmed, he shall refuse to answer the interrogatories hereinbefore set out, or any other questions touching the subject of inquiry such person upon conviction thereof shall be fined in any sum not more than five hundred dollars, nor less than ten dollars, to which may be added imprisonment in the county jail not exceeding six months.

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## DECISIONS.

(Include 78 N. W. Rep.)

**Meetings of directors.**

A meeting of the directors of a mining corporation, having no by-law for calling meetings, held at the office of the president, called by him on verbal notice, at which all the members were present except one, who could not have voted, because directly interested in the only business transacted, is legal under the above section, and the acts of the directors at such meeting are binding. *Troy Min. Co. v. White*, 10 S. Dak. 475; s. c., 74 N. W. Rep. 236.

(So. Dak. Stats., § 2932, subd. 4; Anno. Corp. L., So. Dak., p. 14.)

**Contracts of directors with corporation.**

It is competent for the board of directors of a corporation to enter into a contract of accord and satisfaction with a member of the board who is also treasurer of the corporation. *Troy Min. Co. v. White*, 10 S. Dak. 475; s. c., 74 N. W. Rep. 236.

**Pleading corporate existence.**

Where plaintiff alleges that it is a corporation, its corporate existence is not put in issue under Comp. Laws, § 2908, by defendants' denial of such corporate existence on information and belief. *Board of Education, etc. v. Prior*, 77 S. W. Rep. 106.





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TENNESSEE.

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# TENNESSEE.

## LAWS OF 1899.

Chapter	2. Fees of secretary of State.	For each abstract of charter of a foreign charter of incorporation, \$20.00.
	11. Payment of wages.	For filing each charter of a foreign corporation, \$20.00.
	17. Laundry corporation—form of charter.	For attaching the great seal to any document (except those herein named and pardons), \$2.00.
	94. Negotiable instruments law—title only.	For filing articles of consolidation of corporations (in addition to tax), \$25.00.
	187. Acknowledgments by corporations.	For filing other articles of agreement between corporations, \$25.00.
	209. Fees of secretary of State.	For each charter or certificate of a municipal corporation, \$50.00.
	224. Construction company — form of charter.	§ 2. Be it further enacted, That on every charter of incorporation granted for the general welfare of society, and not for individual profit, except charters granted for purely religious or educational purposes, there shall be charged in said office a fee of twenty-five dollars. * * * * *
	282. Reports of coal oil, etc., corporations — title only.	§ 4. Be it further enacted, That this act shall not be construed as repealing any charge made in said office under existing laws for any service not specified herein.
	286. Discriminations by press bureaus — title only.	§ 5. Be it further enacted, That this act shall not be construed as amending or repealing any existing law under which the fees paid in the office of the secretary of State become revenue. See chap. 209, post.
	300. Lighting and heating companies — form of charter.	
	304. Powers of trading and agricultural corporations.	
	349. Inspection of illuminating oils — title only.	
	401. Inspection of factories — regulations.	
	431. Foreign corporations — privilege tax.	
	432. Privilege taxes — organization tax.	
	435. General taxation.	

### CHAPTER 2.

#### Fees of Secretary of State.

AN ACT entitled "An act to fix the fees to be charged in the office of the secretary of State."

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That from and after the passage of this act, the following fees shall be charged in the office of the secretary of State, to wit:

\* \* \* \* \*

For granting and recording each domestic charter of incorporation having a capital stock, \$10.00.

For each certified copy of a domestic charter of incorporation, \$10.00.

For each certified copy of a foreign charter of incorporation, \$20.00.

CHAPTER 11.  
Payment of Wages.

AN ACT requiring all persons, firms, corporations, and companies using coupons, scrip, punchout, store orders, or other evidences of indebtedness to pay laborers and employes for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employes, laborers, or a bona fide holder, and to provide a local remedy for collection of same in favor of said laborers, employes and such bona fide holder.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies using coupons, scrip, punchouts,

## Laundry corporations; acknowledgments.

store orders, or other evidences of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded redeem the same in the hands of such laborer, employe or bona fide holder in good and lawful money of the United States; Provided, The same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employes, or if presented and redemption demanded as aforesaid by such laborers, employes, or bona fide holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidences of indebtedness to such employes, laborers or bona fide holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; Provided, further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandising at the commissary company store or other repository of such company, firm, person or corporation aforesaid.

§ 2. Be it further enacted, That any employe, laborer or bona fide holder referred to in section 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act.

§ 3. Be it further enacted, That nothing herein in this act contained is to be so construed as to legalize the issuance or use of scrip. That all laws in conflict with this act be, and the same are hereby repealed.

## CHAPTER 17.

## Laundry Corporations—Form of Charter.

AN ACT to amend an act entitled "An act to provide for the organization of corporations," being chapter 142 of the Acts of 1875, so as to provide for the organization of corporations for the laundry business.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That chapter 142 of the Acts of 1875, entitled "An act to provide for the organization of corporations," passed March 19, 1875, be, and the same is hereby amended so as to provide for the organization of corporations for carrying on the laundry business.

§ 2. Be it further enacted, That the form of a charter for a laundry corporation shall be as follows:

## STATE OF TENNESSEE.

## Charter of Incorporation.

Be it known, That (here insert the names of five or more persons, not under the age of twenty-one years, applying for the charter), are hereby constituted a body politic and corporate under the name and style of (here insert the name of the corporation), with a capital stock of (here insert the amount of the capital), and for the purposes usual and appropriate to the laundry business.

The general powers of said corporation are (here insert the powers as contained in section five (5) of said Act of 1875, chapter 142).

See Anno. Corp. L., Tenn., p. 7.

## CHAPTER 94.

## Negotiable Instruments Law.

A general act relating to negotiable instruments, being an act to establish a law uniform with the laws of other States on that subject.

This is the codification of the law of negotiable instruments, prepared by the commission on uniformity of legislation, and adopted in New York and other States. It is too long to come within the plane of this work.

## CHAPTER 187.

## Acknowledgments by Corporations.

AN ACT to provide a good and sufficient form of authentication or acknowledgment for record of a deed or other instrument in writing, executed by a corporation, w.th or without a seal.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the authentication or acknowledgment for record of a deed or other instrument in writing, executed by a corporation, whether it has a seal or not, shall be good and sufficient, when made in substantially the following form:

County of.....  
State of.....{

Before me..... the State and county aforesaid, personally appeared....., with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the president (or other officer authorized to execute the instrument) of the..... the within named bargainer, a corporation, and that he as such....., being authorized so to do, executed the foregoing instrument for the purpose therein con-

**Fees of secretary; construction, lighting or heating companies.**

tained, by signing the name of the corporation by himself, as.....

Witness my hand and seal, at office in...  
..... this ..... day of .....

**CHAPTER 209.****Fees of Secretary of State.**

**AN ACT** to fix fees to be charged in the office of the secretary of State for granting and registering amendments to charters of corporations.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the following fees shall be charged in the office of the secretary of State for the following services, to wit: For granting and registering any amendment of the charter of any corporation incorporated under chapter 142 of the Acts of 1875, or under any amendment thereof, unless it be a corporation for purely educational or religious purposes, \$10.00.

For granting and registering any amendment of the charter of any corporation chartered by any act of the general assembly, or by any chancery court, \$100.00.

For granting and filing any amendment of any charter of incorporation not included in either of the foregoing provisions, except amendments of charters, granted for purely educational or religious purposes, \$10.00.

§ 2. That this act shall not be construed as amending or repealing an act passed January 20, 1899, and approved February 25, 1899, fixing a schedule of fees for the office of secretary of State, but only as prescribing additional fees.

§ 3. That this act shall not be construed as amending or repealing any existing law under which the fees of said office become revenue.

See chapter 2, ante.

**CHAPTER 224.****Construction Company—Form of Charter.**

**AN ACT** to amend chapter 142 of the Acts of 1875, entitled "An act to provide for the organization of corporations."

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That chapter 142 of the Acts of 1875, be amended so that the form of the charter of a construction company shall be as follows:

**STATE OF TENNESSEE.****Charter of Incorporation.**

Be it known, That (here insert the names of five or more persons not under twenty-one years of age) are hereby constituted a body politic and corporate by the name of (here insert the name of the corporation) with a capital stock of (here insert the amount of capital stock to be

authorized). The general powers of said corporation are (here insert the general powers as in section 5 of said Act of 1875). Said corporation shall have the right to conduct the business of constructing, building and erecting for other persons or corporations, railroads, street railroads, incline railroads, cable or cog railroads, bridges, locks, dams, houses, or any other public or private buildings or improvements, or to do any portion of the work thereon, including the equipment of any kind of railroad; but it shall not have the right to own or operate (except while actually engaged in the work of construction and for the purposes thereof), any railroad, or any street, incline, cable, or cog railroad.

See Anno. Corp. L., Tenn., p. 7.

**CHAPTER 282.****Reports of Coal Oil and Similar Corporations.**

**AN ACT** to provide for reports from persons, firms, and corporations having coal oil, carbon oil, petroleum, kerosene oil, gasoline, and other products of petroleum, inspected.

Title only inserted for reference.

**CHAPTER 286.****Discriminations by Press Bureaus.**

**AN ACT** to prevent discrimination in vending, supplying, and distributing of news in this State, and to provide penalties for violations of this act.

Title only for reference.

**CHAPTER 300.****Lighting and Heating Companies -- Form of Charter.**

**AN ACT** to be entitled "An act to amend an act passed March 19, 1875 (Acts 1875, chapter 142), entitled 'An act to provide for the organization of corporations.'"

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That chapter 142 of the Acts of 1875, entitled "An act to provide for the organization of corporations," approved March 23, 1875, be, and the same is hereby, amended so as to embrace lighting and heating companies, and the manufacture of lamps and heaters to be used for such purposes.

§ 2. Be it further enacted, That the form of charter for such company shall be as follows:

**STATE OF TENNESSEE.****Charter of Incorporation.**

Be it known, That by virtue of the general laws of the land (here insert the names of five or more corporators over the age of

**Trading, etc., companies; inspectors of factories.**

twenty-one years), are hereby constituted a body politic and corporate, by the name and style (here insert the name of the corporation, and the nature of business proposed to be transacted). The general powers of said corporation are (here insert the powers as contained in section five (5) of the Act of 1875, chapter 142).

§ 3. Be it further enacted, That such corporation shall have the right to purchase, use, or dispose of such patent rights as may be necessary or useful in its business in as full and ample a manner as is allowed by law to individuals, and may receive the assignment of any such patent right in payment of any stock subscribed to the amount of the value of said patent, as agreed on by the subscriber and the corporation.

See Anno. Corp. L., Tenn., p. 7.

**CHAPTER 304.**

**Trading and Agricultural Corporations.**  
AN ACT to amend an act entitled "An act to provide for the organization of corporations," passed March 19, 1875, and approved March 23, 1875, being chapter 142 of the compilation of the acts of the general assembly of the State of Tennessee, of 1875, so as to allow corporations organized for the purpose of carrying on trade of merchants, to buy and sell and deal in agricultural products, and to buy and sell and deal in merchandise.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That section 12 of chapter 142, of the acts of the general assembly of the State of Tennessee, passed March 19, 1875, and approved March 23, 1875, entitled "An act to provide for the organization of corporations," be, and the same is hereby amended as follows: Corporations organized for the purpose of carrying on the trade of merchants are hereby authorized and empowered to buy and sell and deal in agricultural products, and to buy and sell and deal in merchandise.

**CHAPTER 349.**

**Inspection of Illuminating Oils and Fluids.**

AN ACT to provide for the inspection of illuminating oils and fluids.

Title only for reference.

**CHAPTER 401.****Inspection of Factories — Regulations.**

AN ACT to provide for the inspection of shops and factories, the appointment of a shop and factory inspector, and defining his duties and powers.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That

the governor, with the consent and advice of the senate, shall appoint an officer to be known as a shop and factory inspector, who shall hold office for a term of two years, or until his successor shall be appointed and qualified; Provided, That he may be removed at any time by the governor for cause.

§ 2. Be it further enacted, That it shall be the duty of the shop and factory inspector to inspect all workshops and factories where machinery is used at least once every six months, and he shall have authority to enter such workshops or factories at all proper times for the purposes of such inspection. He shall, on or before the first day of January of each year, make a report to the governor of the condition as respects safety to life and health of workshops and factories visited by him, and said report shall be printed for the use of the general assembly at its regular sessions. The expense of printing said report shall be paid out of the general appropriation for printing the reports of State officers.

§ 3. Be it further enacted, That all workshops and factories where machinery is used shall be well ventilated and kept as clean as the nature of the business will permit. The belting, shafting, gearing, machinery, and drums of all workshops and factories where machinery is used, when so placed as in the opinion of the shop and factory inspector to be dangerous to persons employed therein while engaged in their ordinary duties, shall, as far as practicable, be securely guarded.

§ 4. Be it further enacted, That the shop and factory inspector may order the opening of all hatchways, elevator wells, and wheel holes, upon every floor of any workshop or factory where machinery is used, to be protected by good trapdoors, self-closing hatches, or safety catches or other safeguards such as will insure the safety of the employes in such workshop or factory when engaged in their ordinary duties.

§ 5. Be it further enacted, That every person, firm, or corporation running or operating any workshop or factory where fifteen or more persons are employed at labor, shall provide separate water closets for males and females, and keep the same in good sanitary condition.

§ 6. Be it further enacted, That it shall be the duty of the shop and factory inspector to enforce the provisions of this act by giving proper notices to the person, firm, or corporation operating or running workshops or factories inspected by him, and also to make complaint to the attorneys-general of the respective districts of all violations of this act.

§ 7. Be it further enacted, That any person, firm, or corporation operating or running any workshop or factory where ma-

**Foreign corporations; privilege taxes.**

chinery is used, upon conviction of a violation of this act, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each offense; Provided, No action shall be taken until after four weeks' notice shall have been given by the shop and factory inspector to any firm, person or corporation operating or running a workshop or factory of the changes necessary to be made, and not then if in the meantime said changes have been made.

§ 8. Be it further enacted, That the order or notices given by the shop and factory inspector shall be written and printed, and signed by him officially, and served by himself or by leaving an attested copy thereof at the usual place of business of the person upon whom service is to be made, and a copy of the same shall be filed in the office of the county court clerk of the county in which the workshop or factory is located, and such copy shall be prima facie evidence that notice was given.

§ 9. Be it further enacted, That for the inspection of each factory the inspector shall receive a fee of \$5, to be paid by the factory inspected; Provided, That when his fees reach \$1,500 per annum he shall cover all amount of fee above the sum of \$1,500 per annum into the State treasury; Provided, That this act shall apply to and have force and effect only in counties having a population of over 30,000 by the Federal census of 1890, or any subsequent Federal census.

**CHAPTER 431.****Foreign Corporations — Privilege Tax.**

AN ACT to impose taxes upon corporations, associations, and joint-stock companies chartered or incorporated under the laws of any other State or country, for the privilege of coming into this State for the purpose of doing business here, and to provide for the collection of the same and the payment thereof into the State treasury.

Be it enacted by the General Assembly of the State of Tennessee:

Section 1. That the coming into this State of any corporation, association or joint-stock company charter or incorporated under the laws of any other State or county,\* for the purpose of doing business here, is hereby declared and made a privilege.

§ 2. That every corporation, association, or joint-stock company chartered or incorporated under the laws of any other State or country, and having a capital stock, shall pay into the office of the secretary of State, for the use of the State, upon filing a copy of its charter as required by chapter 31 of the Acts of 1877, and chapter 122 of the Acts

of 1891, a tax of one hundred dollars for the privilege of coming into this State for the purpose of doing business here; Provided, That insurance companies shall be credited by the amount of fees paid to the insurance commissioner upon entering the State to do business.

§ 3. That it shall be the duty of the secretary of State to report and pay to the State treasurer, quarterly, all taxes collected under this act.

See Anno. Corp. L., Tenn., p. 29, act. 13.

**CHAPTER 432.****Privilege Taxes — Organization Taxes.**

AN ACT to provide revenue for State, county, and municipal purposes.

§ 3. Be it further enacted, That all merchants shall pay an ad valorem tax upon the average capital invested by them in their business of 50 cents on the \$100; 35 cents of which shall be for State purposes, and 15 cents of which shall be for school purposes, and a privilege tax of 15 cents on each \$100 worth of taxable property, 7½ cents of which shall be for school purposes, and 7½ cents for State purposes; Provided, That such privilege tax, without regard to the length of time they do business, shall in no case be less than \$5, which \$5 is to be paid when the license is taken out, and in case of those whose privilege tax amounts to more than \$5, the \$5 paid shall be a credit when the balance of the tax is paid; Provided further, That said \$5 shall be equally divided between the State and counties.

§ 4. Be it further enacted, That each vocation, occupation, and business hereinafter named in this section is hereby declared to be a privilege, and the rate of taxation on such privilege shall be as hereinafter fixed, which privilege tax shall be paid to the county court clerk as provided by law for the collection of revenue.

\* \* \* \* \*

[Here follows privilege taxes imposed upon a large number of trades, occupations and vocations, specifically named.]

§ 9. Be it further enacted, That all persons applying for charters of incorporation, and all corporations applying for amendments to their charters shall pay to the secretary of State, as a privilege tax for the granting of such charter amendment, one-tenth of one per centum upon the capital stock so fixed in the charter applied for, or upon the increase of the capital stock sought to be made by the amendment to the charter; and he shall account for and pay into the treasury of the State all moneys so received by him monthly, making a report under oath of the amount so collected. And the privilege tax herein provided for shall be in lieu of all other privilege taxes upon

\* So in session laws.

## Taxation generally.

granting charters of incorporation or amendments thereof.

But this section shall not apply to corporations for literary or religious purposes. The tax shall be due and payable upon the incorporation of said corporation, joint-stock company or association, or upon the increase of the capital stock thereof, and such corporation, joint-stock company or association shall not have or exercise any corporate powers until the said tax shall have been paid, and the secretary of State shall not file or record any charter, certificate of incorporation, or article of association, or certify or give any corporation, joint-stock company or association its charter, until the foregoing tax has been paid, and no such company incorporated by any act of the legislature shall go into operation, or exercise any corporate powers or privileges until the said tax has been paid. This section shall not be construed as an additional tax to that imposed by chapter 32 of the Acts of 1897.

§ 10. Be it further enacted, That hereafter any and all companies consolidating their business, or making any transfer or sale of their property, so as to consolidate their property or any transfer or trade by which one company shall control the business of another company, shall pay to the State of Tennessee a privilege tax on transfer of one-tenth of one per centum on the amount of capital stock of such companies, after such transfer or consolidation; said amount to be collected by the secretary of State, and by him paid into the treasury.

§ 12. Be it further enacted, That whenever the words "in lieu of all other taxes" occur in this act, it is hereby declared to be the legislative intention that county and municipal taxes are excluded.

§ 14. Be it further enacted, That any and all parties, firms and corporations exercising any of the foregoing privileges, must pay the tax as set forth in this act for the exercise of said privileges, whether they make a business of it or not, unless otherwise provided, and this act shall not be so construed as to exempt any person, firm or corporation whatever, exercising any of the foregoing privileges from the payment of the tax herein prescribed, for the exercise of said privileges, as herein provided, and except as provided in chapter 121 of the Acts of 1869 and 1870, excepting State and county fairs and their tenants.

§ 15. Be it further enacted, That it is hereby declared a misdemeanor for exercising any of the foregoing privileges without first paying the taxes prescribed for the exercise of the same, and all parties so offending shall be liable to a fine of not less than \$50 nor more than \$500 for each day such privilege is exercised without license, but this inhibition shall not apply to any person,

firm or corporation engaged in interstate commerce.

## CHAPTER 435.

## Taxation.

AN ACT to provide more just and equitable laws for the assessment and collection of revenue for State, county, and municipal purposes, and to repeal all laws in conflict with the provisions of this act, whereby revenue is collected from the assessment of real estate, personal property, privileges and polls.

\* \* \* \* \*

§ 22. Be it further enacted, That every quasi-public corporation doing business and being operated in this State, such as gas works, water works, electric light, street railroad and dummy railroad companies, and all other corporation public in their character, and which possess rights, franchises, and privileges, shall pay an ad valorem tax upon the actual cash value of its corporate property, including its franchises, easements, incorporeal rights and privileges, and all other corporate property, which said value shall not be assessed at less than the aggregate actual cash value of both its shares of stock and bonded debt, and which said value shall be computed by looking to and considering the market value, and if no market value, the actual value of such stocks and bonds of the corporations; Provided, however, That the assessment and taxation of said corporate property or capital stock shall be in lieu of any assessment or taxation of the shares of stock either to the corporation or the owners thereof; And, provided, also, That the assessed value of the corporate realty and tangible personality otherwise assessed, shall be deducted in making the assessment from the value of the corporate property or capital stock.

Real estate and tangible personality of any corporation defined in this section shall be assessed in the same mode and manner, and where situate, as other real estate and tangible personality. In computing the value of and assessing corporate property or capital stock under this section, the assessed value of real estate and tangible personality shall be deducted from the aggregate actual cash value of the corporate property or capital stock and the remainder shall constitute the value upon which the assessment shall be based. The value of the capital stock, or corporate property, as used in this section, shall be construed as including all tangible and intangible and franchises values.

All corporations, foreign or domestic, other than those hereinbefore designated in this section and in the proviso as to this clause, shall be assessed in the same mode and manner as quasi-public corporations set out in

## Taxation generally.

this section; Provided, however, That this section shall not be construed as including railroad, telegraph, telephone, building and loan, insurance, manufacturing, banking companies or corporations and such other companies or corporations as are set out in sections 23 and 25 of this act, the assessment of such companies or corporations being otherwise provided for in this and in said sections.

For the purpose of assessing quasi-public and other corporate property defined in this section, the president or chief officer in charge of and operating the business, shall fill out and furnish to the assessor, under oath and in writing, an assessment schedule (to be returned by the assessor to the county court clerk for preservation), which schedule shall contain the following questions, viz.:

(1) The amount of stock authorized, the number of shares into which such stock is divided, and the amount of stock paid up, and the number of shares issued.

(2) The market value, and if no market value, the actual value of such shares of stock, and what the same can be sold for on the market.

(3) The amount of the outstanding bonded debt, if any, the rate of interest borne by same, and whether the interest is paid or in default.

(4) The market value, if any, and if no market value, the actual value of such bonded debt.

(5) What dividends have been paid on stock in the last two years, and what surplus, if any, on hand?

(6) An itemized statement of all the tangible personal property in each county, district or ward, where the same is situate, and the assessed value of each item, and an itemized statement of all real property, where the same is situate, and the assessed value of each item, and a certified copy as set out in section 24 of this act.

(7) An itemized statement of all stocks and bonds, securities, notes, accounts, and choses in action, owned or held, whether the same be unincumbered or transferred or deposited, or used as collateral, wherever the same may be situate, and, also, all moneys on hand, or on deposit, wherever the same may be situated.

(8) Such other facts pertaining to the value of the property as may be demanded, or deemed necessary or material by the assessor.

The assessor shall, in the premises, have full power and authority to examine witnesses; to inspect or require the production of books or papers; to obtain and consider any evidence other than that contained in said statement that he may deem material or necessary. The assessor shall visit and inspect the property whenever practicable; inform himself as to the value of same; ob-

tain all necessary or material evidence of the value of the property, and of the shares of stock, and of the bonded debt, either from the statement required in this act, or from such other sources as he may deem proper or necessary.

§ 23. Be it further enacted, That all persons, copartners, and joint-stock companies engaged in the manufacture of any goods, wares, merchandise, or other articles of value, shall pay an ad valorem tax upon the actual cash value of the property, real, personal or mixed, which is used and held for the purpose of manufacturing, preparing, completing and finishing goods, wares and merchandise, and the articles on the manufacture of which the parties aforesaid shall be engaged; Provided, The value of articles manufactured from the produce of the State in the hands of the manufacturer shall be deducted in assessing the property.

Each manufacturing corporation, either foreign or domestic, shall pay an ad valorem tax upon the actual cash value of its capital stock or corporate property, including its franchises, easements, incorporeal rights and privileges, and all other corporate property, which said value shall not be less than the actual cash value of both its shares of stock and its bonded debt, and which said value shall be computed by looking to and considering the market value, and if no market value, the actual value of such stocks and bonds; Provided, however, That the assessment or taxation of said corporate property or capital stock shall be in lieu of any assessment or taxation of the shares of stock, either to the corporation or to the owners thereof; Provided, also, That the assessed value of the corporate realty and tangible personal property otherwise assessed, and in the case of manufacturers, the value of the articles manufactured from the produce of the State in the hands of the manufacturer, shall, in making the assessment, be deducted from the value of the capital stock or corporate property.

Real estate and tangible personal property of any corporation defined in this section shall be assessed in the same mode and manner and where situate, as other real estate and tangible personality. In computing the value of, and assessing corporate property or capital stock under this section, the assessed value of real estate and tangible personality, and in the case of manufacturers, the actual cash value of articles manufactured from the produce of the State in the hands of the manufacturer, shall be deducted from the aggregate actual cash value of the corporate property or capital stock, and the remainder shall constitute the value upon which the assessment shall be based. The value of the capital stock, or corporate property, as used in this section, shall be construed as including all tangible and intangible, or franchise values.

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For the purpose of assessing property defined in this section, the assessor shall require the owner, operator, business partner, president, or other official in charge of, or operating the business, to fill out and furnish to the assessor, under oath and in writing, an assessment schedule (to be returned by the assessor to the county court clerk for preservation), which schedule shall contain the following questions, viz.:

(1) Is the business owned and operated by a person, a copartnership, a joint-stock company, or a corporation?

(2) Amount of capital stock authorized, number of shares into which the capital stock is divided, amount of stock paid up, and number of shares issued.

(3) The market value, and, if no market value, the actual value of such shares of stock and what the same can be sold for on the market.

(4) The amount of the outstanding bonded debt, if any, the rate of interest borne by the same, and whether the interest is paid up or in default.

(5) The market value, and if no market value, the actual value of such bonded debt.

(6) What dividends have been paid on stock in the last two years, and what surplus, if any, on hand?

(7) The aggregate amount of capital invested in the business, and what amount of money has been invested in real estate, building, machinery, engines, waterways, tramways, and privileges, and all other equipments or property belonging to or connected with the business, and what is their present value?

(8) What is, approximately, the gross amount of articles actually manufactured, or prepared, in the business? What is the approximate amount and value of goods manufactured and material for manufacture on hand, and the current prices for same?

(9) An itemized statement of all real property otherwise assessed where the same is situate, and the assessed value of the same.

A statement of all stocks, bonds, securities, notes, choses in action owned or held, whether the same be unencumbered, or transferred, or deposited, or used as collateral, wherever the same is situate, and also all moneys on hand or on deposit, wherever the same may be situate.

(10) Such other facts pertaining to the value of the property as may be demanded or deemed necessary or material to the assessor.

The assessor shall, in the premises, have full power and authority to examine witnesses; to inspect or require the production of books or papers, and to obtain and consider any evidence other than that contained in said statement, that he may deem material or necessary.

All manufactured articles on hand shall

be presumed liable to assessment and be assessed by the assessor, unless the same is affirmatively shown by the owner to be manufactured from the produce of the State, and the true values thereof furnished the assessor.

The assessor shall visit and inspect the property; inform himself as to the value of the same; and obtain all necessary or material evidence of the value of the property and of the shares of stock and bonded debt, either from the statement required in this section, or from such other sources as he may deem proper or necessary.

§ 24. Be it further enacted, That when any corporation, foreign or domestic, defined in sections 22 and 23 of this act, owns property in this and another State, or in more than one county in this State, or in more than one civil district in any county, the capital stock or corporate property of the corporation shall except as hereinafter provided in this section as to foreign corporations, be assessed in the county, or place, or civil district fixed in its charter for the meeting of its stockholders, and in case such place of meeting is not fixed in its charter, then in the county, or place, or civil district where the principal office or place of business of the corporation is located, which said assessment shall be made in the following manner, viz.:

The assessor shall compute the value of the capital stock or corporate property at not less than its aggregate actual cash value, and deduct therefrom the assessed value of all real estate and tangible personal property as hereinbefore set out, wherever the same may be situate, and the remainder shall constitute the assessable value of the corporate property or capital stock at the place of assessment. Tangible personal property and realty of such corporation shall be assessed at the place, or in the district where the same is situate, at the time of the assessment, and by the proper authority at that place designated by the law. The assessed value of such real and tangible personalty shall be verified by a properly certified copy from the assessment-rolls or list, which said certified copy shall accompany the statement hereinbefore required, and be likewise returned by the assessor to the county court clerk for preservation.

Foreign corporations mentioned in sections 22 and 23 having branch factories or business in this State shall only be assessed on the actual cash value of the corporate property in this State; Provided, however, The franchise and intangible values of the corporation in this State shall be included in the valuation of the corporate property in this State.

§ 25. Be it further enacted, That the shares of stock of stockholders of any bank or banking association, or loan company, or in-

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surance company, or investment company, or cemetery company, or company or corporation (other than such as are defined and assessable under sections 22 and 23 of this act), doing business in this State, whether domestic or foreign, shall be assessed and taxed for State, county, and municipal purposes as the personal property of the stockholders, whether they reside within or without the State of Tennessee; Provided, however, The assessment of such shares of stock as the property of the stockholder shall be in lieu of any assessment or taxation of the capital stock or corporate property of such corporation, company, or association.

Shares of stock assessable under this section shall be assessed at not less than the actual cash value of the same, less the assessed value of realty and tangible property, which said actual cash value of shares of stock shall be computed by looking to and considering the market value, and if no market value, the actual value of the shares of stock, or from any other evidence of the value of the same.

Real estate and tangible personality of any corporation, company or association, defined in this section, shall be assessed to the same in the same mode and manner, and where situate, as other real estate and tangible personality, but in computing the assessable value of such shares of stock, the assessed value of the realty and tangible personality only shall be deducted from the value of the shares of stock, and the remaining value constitute the value upon which the assessment shall be made.

Assessments of shares of stock under this section shall be made at the place, ward or district of the town or county in which the corporation, association, or company is located.

The president or business manager of any corporation, association or company, defined in this section of this act, is hereby required to fill out and furnish, upon oath, to the assessor an assessment schedule in writing, (to be filed with the county court clerk for preservation), which schedule shall contain the following questions, viz.:

(1) The amount of capital invested in the business.

(2) The shares of stock outstanding, with the name and residence of the shareholders.

(3) The market value, and if no market value, the actual value of the shares of stock, and what the shares of stock can be sold for on the market.

(4) The amount of dividends for the last two years, and the amount of surplus and undivided profits, if any.

(5) A certified copy of the assessed value of the real estate and tangible personality, and where situate.

(6) Such other facts pertaining to the value

of the shares of stock as may be demanded or deemed material by the assessor.

The assessor shall have full power to summon witnesses; to inspect or require the production of books and paper; and obtain and consider any evidence other than said statement, which he may deem proper and necessary.

For the purposes of this act and for taxation when the capital is not divided into shares of stock each one hundred dollars of the capital invested shall be held as one individual share, and such shares are defined and declared to be personal property, assessable at the actual cash value of same. If the president or business manager has a partner or partners, he shall, upon his oath, furnish to the assessor, in writing, the number of shares, ascertained as above provided, held or owned by such partner or partners in the business, which shares so held shall be assessed where the business is located, as hereinbefore indicated.

The president or manager shall pay the tax so levied, and make the amount so paid a charge against such partner or partners; he shall be held to be the sole owner of all the shares in the business, the same to be assessed at the place heretofore designated.

That there shall be kept at all times, in the office where the business of such bank or banking association, or other corporation included in the provision of this section, and organized under the authority of this State or of the United States, shall be transacted, a full and correct list of the names and residences of the stockholders therein and the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes, during the business hours of each day on which business may be legally transacted.

That when the owner of stock in any bank or banking association or other corporation included in the provisions of this section, organized under the laws of this State, or of the United States, shall not reside in the same county where the bank or corporation or association is located, or is a non-resident of this State, the revenue collector for the State, county or municipality, shall, respectively, have the power to collect tax assessed by this act by instituting attachment proceedings; and said tax shall be and remain a prior lien on the stock until the payment of the same.

That for the purpose of collecting such taxes, and in addition to any other laws of this State relative to the imposition and collection of taxes, it shall be the duty of such corporation to pay the taxes due upon such stock, regardless of any dividend or earnings belonging to such stockholder; a prior lien being hereby declared on all such stock, on and after the tenth day of January of each year, and the said cor-

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poration, being hereby subrogated to such prior lien for the purpose of enforcing repayment of any taxes that may be so paid for the account of any such stockholder. If the taxes on such shares shall not be paid by such corporation, then the State, county or municipality may, after such tax may have become delinquent, proceed to collect the same by attachment on said shares of stock in any court of competent jurisdiction, through counsel to be employed for that purpose.

§ 26. Be it further enacted, That this act shall not be so construed, and shall not so operate as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of the stock is fixed and prescribed, and declared to be in lieu of all other taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate, and not less than the actual cash value of all shares of stock in said corporation, including the net surplus.

Provided, however, That where the State has provided in the charter of any such corporation or company that it shall pay a stated per cent. on each share of stock subscribed, annually to the State, which shall be in lieu of all other taxes, it shall be entitled annually to a credit therefor upon its assessment of its capital stock as hereinbefore provided.

§ 27. Be it further enacted, That the privileges and franchises granted by the legislature of this State to savings banks, or institutions for savings, are hereby declared to be personal property, and liable for taxation for such, in the town, ward or district where they are located, to an amount not exceeding the gross amount of their surplus earned and in possession of said banks or institutions, and the officers of such institutions or banks shall be examined, on oath, by assessors as to the amount of such surplus, and the property of such banks and institutions shall be liable to seizure and sale for the payment of all taxes upon them for said privileges and franchises.

§ 28. Be it further enacted, That merchants shall pay an ad valorem tax upon the capital invested in their business, equal to that levied on taxable property. The term, "merchants," as used in this act, includes

all persons, copartnerships, or corporations engaged in trading or dealing in any kind of goods, wares, merchandise, either on land or in steamboats, wharf boats, or other craft stationed or plying in the waters of this State, and confectioners, whether such goods, wares or merchandise be kept on hand for sale, or the same be purchased and delivered for profit, as ordered.

(1) Persons, firms, companies or corporations engaged in the business of merchandising other than such as are embraced in subsequent subsections of this section, shall be taxed as herein set out. Such persons, firms, companies or corporations shall, at the expiration of the period of the bond provided for in this act, file with the clerk of the county court of the county, a statement, under oath, showing the amount of capital invested in business to be assessed for taxation, but under no circumstances shall the amount to be assessed be less than the value of the average amount of stock on hand during the preceding year, to be ascertained by adding together the value of the highest amount of stock on hand at any time during said year with the value of the lowest amount of stock on hand at any other time during said year, and dividing the same by two, said statement to be sworn to by such merchant, person, or the head of such firm, company or corporation, in which he shall state that he has not reduced his stock for the purpose of escaping taxation at any time, and has fully, truly and correctly, without evasion or reservation, made return as required by law, and said average amount of stock, as sworn to by said merchant, person, firm, company or corporation, shall be deemed the taxable value of the capital of such merchant, person, firm, company or corporation, upon which he shall pay to the county court clerk the same tax as levied upon real estate and other property for State, county and municipal purposes. The word, "capital," as used in this subsection, shall be construed so as to mean the average amount of stock on hand during the year in which it is offered for sale, the amount to be ascertained as provided in this section, but if the average stock on hand is less than the capital stock employed by said merchant, firm, or corporation, he shall pay a tax on the capital stock.

(2) Stock of merchandise, wares, goods and chattels, sold at auction or on commission, shall be assessed for taxation, and the following is declared to be the method by which the amount to be returned or assessed, shall be determined, viz.:

Where any person, company, corporation or firm shall have sold goods, wares, merchandise, or chattels at auction or on commission, whether in the regular business of selling at auction or on commission, or shall have made such sales in connection with any other business, the aggregate amount of said

## TENNESSEE.

## Taxation generally.

auction or commission sales for the period engaged in business, not exceeding twelve months, shall be ascertained; and one-third of said amount of sales shall be returned for taxation.

The person, firm, company, or corporation engaged in such business shall, at the expiration of the period covered by the bond provided for in this act, file with the clerk of the county court a statement giving the aggregate amount of sales made during such period, verified by an oath that said statement is made without evasion or reservation, correctly, fully and truly shows the aggregate amount of sale of every kind and character made during said period.

(3) All capital employed during the preceding twelve months in any manner of trading in which there is no stock of goods, wares and merchandise kept on hand for sale, and the aggregate capital reported shall be deemed the taxable capital of such merchant or factor, upon which he shall pay the same tax as levied upon real estate and other property, for State, county and municipal purposes; and the report herein required shall be sworn to by such merchant, or the head of such copartnership, person, mercantile firm, company, or corporation.

The person, firm, company or corporation engaged in such business shall, at the expiration of the period covered by the bond provided for in this act, file with the clerk of the county court a statement giving the aggregate amount of capital employed during such period, verified by an oath that said statement, without evasion or reservation, correctly, fully and truly shows the aggregate amount of capital of every kind and character employed during such period.

(4) If in any case the statements required herein to be made to the clerk of the county court, should for any reason be considered as unjust, incorrect or inadequate, either by the clerk of the county court or his deputy, or by the district attorney, or by any revenue agent of the State or county, or by any reputable taxpayer of the State, filing a written objection with such clerk, it shall be the duty of such clerk or his deputy, on his own motion, or by direction of such district attorney, or revenue agent, or at the request of the taxpayer filing a written objection, to issue a citation to the person, firm, company or corporation returning the statement to appear before such clerk within five days from the date of the issuance of the citation, and show cause why such statement shall not be revised and corrected. The clerk of the county court and his deputy, shall, in the premises, have full power and authority to issue subpoenas; to send for and examine witnesses; to administer oaths; to send for and examine books; and it shall be the duty of the clerk, upon such investigation, to correct, revise and audit such statement and

fix the amount of taxes for which the party or parties may be liable. It shall be the duty of such clerk also in such cases, to inquire into and ascertain the amount of insurance upon the property during the time covered by said bond.

§ 29. Be it further enacted, That no merchant, person, firm, company, copartnership or corporation shall commence or continue a business declared to be a privilege under this act, or revenue act, in any county of this State without obtaining license from the clerk of such county, in accordance with the previous provisions of this act, and every person, individual, or member of any copartnership or corporation, so offending, shall be subject to prosecution for each day's violation of this law, and on conviction, shall be fined not less than one hundred dollars for each offense. Said license is hereby required to show all the State and county revenue paid, the name or names of the party or firm, or corporation or company, and is further required to be registered in the office of the clerk of the circuit court in a book kept by him for that purpose, showing in full the date of issuance, name or names of the party or parties to whom issued, the character of the business and the amount of State and county tax paid, and to be countersigned by the clerk of the circuit court or his deputy, and for registering and countersigning said license, and for making a quarterly report of the same to the State comptroller and chairman of the county court, to be accompanied with his revenue reports, he shall receive the sum of fifty cents for each license, to be paid by the party or parties to whom said license is issued, and said license shall not be considered valid, nor shall it be delivered by the county court clerk, until the provisions of this act have been complied with, and each violation of the provisions of this act on the part of the county or circuit court clerks is hereby declared a misdemeanor, and it is also declared a misdemeanor for any person, except the circuit court clerk, or his legally qualified deputy, to sign the name of the circuit court clerk to said license, and upon conviction, the offender shall be fined not less than fifty nor more than one hundred dollars.

Each person or firm procuring a license shall keep the same posted in a conspicuous place in his place of business.

Every merchant, firm, company, person, or corporation applying for licenses, shall, before receiving the same, execute a bond to the State, with good security, to be approved by the clerk of the county court, in the sum of five hundred dollars, conditioned that said merchant, firm, company, person or corporation, will render to the clerk issuing the license, at the end of twelve months from the date of the bond (or if the mer-

## Decisions.

chant ceases to do business before the expiration of twelve months, then as soon as he ceases to do business), a true statement under oath, as prescribed by this act, and will pay all taxes, fines and penalties provided for by law. For taking the bond and issuing the license, the clerk shall be entitled to fifty cents, to be paid at the time of issuance.

(2) Any merchant, person, firm, or company or corporation, continuing in business, shall renew his license annually; and no license shall authorize merchandising out of the county where issued, nor for a period longer than one year, nor for a shorter period than three months. But should any person, firm or corporation, having paid in advance for such license, sell, transfer or dispose of such business before the expiration of said license, the license shall be transferable, and the person purchasing shall have full authority to continue said

business until the expiration of said license, provided the same bond shall be given as hereinbefore required in this section, to account for his proportion of the ad valorem tax.

(3) No person, firm, company, copartnership or corporation exercising a taxable business, where the stock of goods, wares and merchandise is carried, shall sell or transfer said business as an entirety until all State and municipal and county taxes due thereon shall have been first paid; and in case any person, firm, company, copartnership or corporation exercising such business shall make an assignment, general or partial, for the benefit of creditors, it shall be the duty of the assignee to first pay in full, out of the assets that come into his hands, all taxes that may be due upon such business, which shall be a prior lien in preference to all other claims.

## DECISIONS.

(Include 52 S. W. Rep. 792.)

**Organization.**

It is no objection to the validity of a corporation organized to operate a cotton factory, that it purchased an established plant in full operation. *Bristol Bank & Trust Co. v. Jonesboro Banking & Trust Co.* (Sup. Ct., Tenn.), 48 S. W. Rep. 228 (1898).

**Name.**

The fact that a corporate name is almost identical with that of a prior partnership is not conclusive of a device to defraud the partnership creditors by incorporating. *Bristol Bank & Trust Co. v. Jonesboro Banking & Trust Co.* (Sup. Ct., Tenn.), 48 S. W. Rep. 228 (1898).

**Franchise, not exclusive.**

A franchise not exclusive by the terms of the grant may be injuriously affected by the grant of another franchise by the legislature, without compensation. *Clarksville & R. Turnpike Co. v. Montgomery Co.*, 100 Tenn. 417; 45 S. W. Rep. 345 (1897).

**Officers, dealings with.**

Persons dealing with officers of a corporation not provided for in the charter or by-laws, and who are acting under the direction and within the scope of authority of

its president in negotiating contracts, are not bound to know that the charter and by-laws do not authorize such officers to conclude the contract by execution, and that the approval of the president is necessary. The deprivation of the benefit of a contract made with an officer is sufficient "prejudice" to support estoppel. *Allison v. Tenn. Coal, Iron, etc., Co.* (Ch. App., Tenn.), 46 S. W. Rep. 348 (1898).

A corporate official rendering service to the corporation outside of the scope of his official duty, and not required thereby, may recover compensation therefor upon an implied promise, even though he be a director. *Reeve v. Harris* (Ch. App., Tenn.), 50 S. W. Rep. 658 (1899).

One who receives checks of a corporation, executed by its secretary and treasurer in payment of his individual indebtedness, is liable to the corporation for the amount thereof, unless he shows that the corporation either directly or inferentially assented thereto. *Mt. Verd Mills Co. v. McElwee* (Ch. App., Tenn.) 42 S. W. Rep. 465 (1897).

**Directors.**

A director cannot, by his own, or the votes of those representing him in the directorate, vote and secure to himself an exorbitant

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salary; but he must act in the utmost good faith, and in the interest of the stockholders whom he represents. *Harris v. Lemming-Harris Agr. Works* (Ch. App., Tenn.), 43 S. W. Rep. 869 (1896).

Where in a suit for services by a superintendent, it appears that the services rendered were reasonably worth the amount charged, the decree of the chancellor in his favor will be affirmed. *Id.*

Directors are not such direct or technical trustees as to take a case against them out of the statute of limitations. *Cullen v. Coal Creek Min. & Mfg. Co.* (Ch. App., Tenn.), 42 S. W. Rep. 693 (1897).

**Stockholders; liability.**

A complaint cannot be heard that a decree for services rendered a corporation of another State was not granted against its stockholders, under the statute of that State making them personally liable, the statute not being pleaded, nor any intimation given in the pleadings or prayer that such relief would be sought. *Vance v. McNabb Coal & Coke Co.* (Ch. App., Tenn.), 48 S. W. Rep. 235 (1897).

A person need not be a holder of stock to be an applicant for a charter or a charter member, or a member of the board of directors. *Bristol Bank & Trust Co. v. Jonesboro Banking & Trust Co.* (Sup. Ct., Tenn.), 48 S. W. Rep. 228 (1898).

A stockholder cannot, as a rule, without authority from the corporation, join it with himself, as complainant in a bill to wind up the corporation and sell its property; but where a corporation has abandoned business for years and has no known board of directors or other officers, a stockholder may file a bill in behalf of the corporation for the purpose of preserving its property, without first demanding that the corporation itself bring suit. *Tenn. Mountain Petroleum & Mining Co. v. Ayers* (Ch. App., Tenn.), 43 S. W. Rep. 744 (1897).

Minority stockholders who delay for nine years to sue to set aside purchases of the corporation on the ground of ultra vires, are guilty of laches. *Cullen v. Coal Creek Min. & Mfg. Co.* (Ch. App., Tenn.), 42 S. W. Rep. 693 (1897).

A corporation cannot recover the balance of an unpaid subscription, where defendant has subscribed for increased stock only, which is illegal by reason of the failure of the directors, to comply with statutory requirements, where no rights of creditors are involved, though defendant became a director, and had paid the greater portion of his subscription. *Union Ry. Co. v. Snead*, 99 Tenn. 1; 41 S. W. Rep. 364 (1897).

**Stock, personality; transfer.**

Stock in a corporation for owning and operating factories, acquiring land and

building and owning houses for its members, is personal property, and is alienable. A by-law prohibiting a transfer except to the corporation is void, and imposes no legal obligation on the corporation to buy the stock of a retiring member, although the stock may be worthless except to the corporation or a member of it. *Herring v. Ruskin Co-op. Assn.* (Ch. App., Tenn.), 52 S. W. Rep. 327 (1899). In the absence of express or implied charter or statutory power, a corporation has no power to traffic in its own stock. *Id.*

Stock may be subscribed and paid for in property suitable for corporate purposes, provided the same is fairly done and in good faith. *Bristol Bank & Trust Co. v. Jonesboro Banking & Trust Co.* (Sup. Ct., Tenn.), 48 S. W. Rep. 228 (1898).

**By-laws, notice of.**

A corporation can make no by-laws inconsistent with its charter or the laws and Constitution of the State. A by-law prohibiting transfers of stock except to the corporation, although indorsed on the certificate, is void, and imposes no legal obligation on the corporation to buy the stock of a retiring member. *Herring v. Ruskin Co-op. Assn.* (Ch. App., Tenn.), 52 S. W. Rep. 327 (1899).

A by-law of a corporation requiring a contract for more than three months to be approved by the board of directors does not affect one who, without knowledge thereof, makes a lease to the corporation. (Sup. Ct., Tenn.), 47 S. W. Rep. 498 (1898).

**Deed of corporation; seal; misnomer.**

A corporate deed to which the corporate seal is not affixed passes an equitable estate. *Precious Blood Soc. v. Elsythe* (Sup. Ct., Tenn.), 50 S. W. Rep. 759 (1899). A misnomer or variation in the name of a corporation contained in a deed is not material, if identity can be established. *Id.*

**Liability to servants.**

The superintendent of a mine is not a "servant, laborer, operator or clerk" within a charter provision making the stockholders liable for their compensation or wages. *Cocking v. Ward* (Ch. App., Tenn.), 48 S. W. Rep. 287 (1898).

A charter providing that the stockholders shall be individually liable for all moneys due servants of the company, if the corporation becomes insolvent, does not render a stockholder liable for the entire amount due for the services of a servant who is also a stockholder. The latter has simply a right to compel contribution. *Id.*

**Insolvency.**

After the determination of the officers of a corporation to sell the business because of

## Decisions.

insolvency and inability to make profits, the assets become a trust fund for creditors, and a subsequent sale was fraudulent as to them. *Brown v. Morristown Co-operative Stove Co.* (Ch. App., Tenn.), 42 S. W. Rep. 161 (1897).

From the time of overt acts of insolvency, held, that the company's assets were a trust fund for all its creditors, and that one creditor could not obtain a priority by execution. *Memphis Barrel & Heading Co. v. Ward*, 99 Tenn. 172; 42 S. W. Rep. 13 (1897).

**Foreign corporations.**

The failure of a foreign corporation to file its charter, as required by L. 1891, chaps. 95, 122, making it unlawful to do business without complying with such requirements, renders such corporation powerless to enforce a contract made by it within the State. *Illinois Bldg. & Loan Assn. v. Walker* (Ch. App., Tenn.), 42 S. W. Rep. 191 (1897).

A foreign corporation that had no power to foreclose a mortgage by reason of its failure to file its charter under the acts of 1891, cannot complain that the Curative Act (L. 1895, chap. 119), giving the power to foreclose such mortgage, is unconstitutional, as impairing the obligation of contracts, as to those parts thereof that postpone such foreclosure for two years after the passage of the act, and limit the interest recoverable to six per cent. of the principal, for, if it seeks the benefit of the act, it must accept its conditions. *Id.*

See Anno. Corp. L., Tenn., p. 29, Act 13; p. 32, Act 17.

Failure of a foreign corporation to file its charter as required by L. 1891, chap. 122 (Anno. Corp. L., Tenn., p. 29, Act 13), will not deprive it of the right to plead the statute of limitations. *Turcott v. Yazoo & M. V. R. Co.* (Sup. Ct., Tenn.), 45 S. W. Rep. 1067 (1898).

See Anno. Corp. L., Tenn., p. 29, Act 13.

Act of 1891 (see Tenn., p. 29, Act 13), does not apply to a corporation having no agent or place of business within the State, which loaned money on application sent to it by loan brokers, who were agents of the borrowers. Notes and mortgages taken by it may be enforced. *Norton v. Union Bk. & Trust Co.* (Ch. App., Tenn.), 46 S. W. Rep. 544 (1898).

The Act of 1895 (see Tenn., p. 32, Act 17),

governing foreign corporations has no application to a foreign building and loan association having no agents in the State, which made a loan thereon payable at its home office. *Neal v. New South Bldg. & Loan Assn.*, 100 Tenn. 607; 46 S. W. Rep. 755 (1898).

Act of 1895, chap. 81, requiring a foreign corporation to file a copy of its charter with the secretary of State, is complied with where such charter has been on file with the secretary for some years prior to passage of act. *U. S. Saving & Loan Co. v. Miller* (Ch. App., Tenn.), 47 S. W. Rep. 17 (1897).

Where a foreign corporation appoints agents in Tennessee for the purpose of working up a loan business and inducing people to effect loans with the corporation, who do effect loans, it carries on business in Tennessee, in the sense of the foreign corporation laws. *Id.*

See Anno. Corp. L., p. 32, act 17.

The Act of 1887, chap. 226, requiring foreign corporations to designate agents in the State on whom process against the corporation may be served supersedes the earlier Act of 1875, chap. 66, requiring foreign corporations to file an irrevocable power of attorney authorizing the secretary of State to accept service. The earlier act did not constitute a contract with corporations acting under it. The Act of 1887 held constitutional. *Conn. Mut. Life Ins. Co. v. Spratley*, 99 Tenn. 322; 42 S. W. Rep. 145 (1897).

See Anno. Corp. L., Tenn., p. 27, Act 7.

Under Act of 1887, chap. 226, authorizing suit against foreign corporation by service on its agent within the State, an action does not lie where the corporation has ceased to maintain agencies within the State, at the time of the transaction, although the agent who performed the service remained in the State and was served. *Guthrie v. Com. Indemnity Assn.* (Sup. Ct., Tenn.), 49 S. W. Rep. 829 (1899).

See Anno. Corp. L., Tenn., p. 27, Act 12.

The making of a loan or mortgage by a foreign corporation, after the passage of the act prescribing conditions on which foreign corporations may transact business, held illegal, though the loan was made pursuant to an application made before the passage of the statute. *New York Nat. Bldg. & Loan Assn. v. Cannon*, 99 Tenn. 344; 41 S. W. Rep. 1054 (1897).





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# TEXAS.

## LAWS OF 1899.

### CHAPTER 43.

#### Organization of Cotton Changes, Chamber of Commerce, and Boards of Trade.

AN ACT to amend article 642, of the revised civil statutes, and to add thereto section 57, regarding the purposes for which private corporations may be created, so as to authorize the organization of cotton exchanges, chambers of commerce, and boards of trade.

Section 1. Be it enacted by the legislature of the State of Texas: That article 642, of the revised statutes of the State of Texas, be amended by adding thereto section 57, to hereafter read as follows:

§ 57. For the organization of cotton exchanges, chambers of commerce and boards of trade, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages of cities and towns, to acquire, preserve and disseminate valuable business information, and to adopt rules, regulations and standards of classification which shall govern all transactions connected with the cotton trade and with other commodities where standards and classification are required, and generally to promote the interest of trade and increase the facilities of commercial transactions. (See Anno. Corp. L., Texas, p. 10ff.)

### CHAPTER 105.

#### Officers of Railroad Corporations.

AN ACT to amend article 4368, chapter 3, title 94, of the Revised Civil Statutes of the State of Texas, prescribing the duties of railway companies with respect to their general and public offices, and the residence of their officers, to be kept and maintained within this State.

Title inserted for reference.

### CHAPTER 117.

#### Organization of Certain Corporations.

AN ACT to provide for the organization of corporations for the purpose of the storage and transportation, and purchase and sale of oil, gas, salt, brine and other mineral solutions; to provide the manner and method of organizing such corporations; to prescribe the rights, powers, privileges and duties of such corporations; to authorize such corporations to conduct, operate and maintain pipe lines, tanks, pump stations, buildings, machinery, apparatus and devices as may be necessary; to own, use and occupy lands, easements, buildings and structures; to empower such corporations to condemn lands and other property for the uses and purposes of such corporations, and to provide the methods therefor; issue stock and bonds and to borrow money and mortgage its franchises and property.

Title inserted for reference.

### CHAPTER 146.

#### Trusts and Combinations.

AN ACT to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies, and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor.

Be it enacted by the legislature of the State of Texas:

Section 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, con-

## Trusts and combinations.

federation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

§ 2. A "monopoly" is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly," as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stocks or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a "monopoly," as defined in this section, is

hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

§ 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture of and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing the monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

§ 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation, or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

§ 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the attorney-general or the district or county attorney; the moneys thus collected to go into the State treasury and to become a part of the general fund, except as hereinafter provided.

## Trusts and combinations.

§ 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

§ 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of no effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as *prima facie* proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of State, and if it be an insurance company, to the commissioner of insurance, statistics and history of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 8. It shall be the duty of the secretary of State, on or about the first day of July

of each year, and at such other times as he shall deem necessary to address to the president, secretary or treasurer of each incorporated company doing business in this State a letter of inquiry as whether said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer under oath of the president, secretary, or treasurer, or any director of said company. A form of affidavit shall be inclosed in said letter of inquiry as follows:

## Affidavit.

STATE OF TEXAS,  
County of .....

I, ..... do solemnly swear that I am the ..... (president, secretary, treasurer or director) of the corporation known and styled ..... , duly incorporated under the laws of ..... , on the ..... day of ..... , 19.., and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making this affidavit, and I do further solemnly swear that the said ..... known and styled as aforesaid, has not since the ..... day of ..... (naming the day on which this act takes effect), created, entered into or become a member of or a party to, and was not, on the....day of ..... nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation, or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, so regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product or mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount of supply or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not issued, and does not own any trust certificates for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholders or directors thereof, the purpose

## Trusts and combinations.

and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31, A. D., 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of sections 2, 3, 4, 5, 6, 10 and 11, of this act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued, and does not own any trust certificates, and has not, for any corporation or any agent, officer or employe thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with the stockholders, directors or any officer, agent or employe of any corporation or corporations, the purpose and effect of which combination, contract or agreement would be a conspiracy to defraud, as defined in section 1 of this act, or to create a monopoly, as defined in sections 2, 3, 4, 5, 6, 10 and 11 of this act.

(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a ..... , within and for the county of ..... , this, .... day of ....., 19....

(Seal)

And on refusal to make oath, in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, such failure shall be prima facie proof that such incorporated company is transacting business in the State of Texas, and has violated the provisions of this act, every day after the expiration of thirty days from the mailing of said letter of inquiry, the secretary of State shall certify to the prosecuting attorney of the district or county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the State, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation.

If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this State; And provided, That whatever money, bonds or other securities may be on deposit in this State shall remain subject to the decision of said court to secure whatever penalties or costs may be adjudged against said corporation or individual. It is provided, however, that all parties making the affidavit provided for in this section shall be exempt from criminal prosecution for any violation of law that may be disclosed by such affidavit. It is further provided, that the secretary of State shall, from time to time, when he may have reason to believe that individuals or partnerships are doing business in this State in violation of this act, address the letter of inquiry herein provided for to such individuals or partnerships and require of them the same answers under oath prescribed in this section for the officers of corporations, the affidavit to which must be made by the individual addressed, or some member of the partnership addressed; the form of affidavit herein prescribed, with such changes as may be necessary to make it applicable to individuals and partnerships shall be inclosed in said letter of inquiry.

§ 9. It shall be the duty of the attorney-general and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The attorney-general and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the attorney-general shall prosecute said suits in the courts of civil appeals and supreme court. The prosecuting attorney shall receive for his compensation one-fourth of the penalty collected; Provided, The fees allowed the prosecuting attorney representing the State, provided for in this section, shall be over and above the fees allowed him by the general fee bill now in force.

§ 10. All actions authorized and brought under this act shall have precedence on motion of the prosecuting attorney or attorney-general of all other business, civil and criminal, except criminal cases where the defendants are in jail.

§ 11. Each corporation, copartnership, firm or individual who may be the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw materials or preparing the same for market by wrapping, baling or other process, who shall lease, rent or operate the same in their own name and refuse or fail to put the same on the market for sale, shall be adjudged a monopoly, and be subject to all the pains and penalties provided in this act.

§ 12. The sale, delivery or disposition of any of the articles, commodities or things hereinbefore mentioned by any individual, company or corporation transacting business

## Trade unions; listing for taxation.

**CHAPTER 153.****Organization of Workingmen.**

contrary to the provisions of this act, within this State or elsewhere, is hereby declared to be unlawful and contrary to public policy, and the purchaser of any article or commodity from any such offending individual, company or corporation shall not be liable for the price or payment thereof, and may plead this act as a defense to any suit for the price or payment, whether the purchase was made directly from the individual, company or corporation so unlawfully transacting business, or indirectly from one who acted for such individual, company or corporation, as agent, representative, solicitor or canvasser; And provided further, That where any money or other thing of value is paid to such individual, company or corporation so unlawfully transacting business, its agent, representative, solicitor or canvasser, the person so paying the same may recover back the amount of the money or the value of the thing, so paid.

§ 13. The following corporations, copartnerships, firms or individuals are also adjudged a monopoly, and subject to all the pains and penalties provided in this act:

Every corporation, copartnership, firm or individual which may gather items of news or press dispatches for sale to newspapers and which shall refuse to sell said items of news or press dispatches to more than one newspaper to a stated number of inhabitants in any city, town or subdivision of the State of Texas, or within a certain radius of territory. Every association of newspapers formed for the purpose of exchanging items of news and press dispatches which may require of its members under pain of forfeiting their membership, that they do not sell to or exchange with newspapers not members of said association any items of news or press dispatches.

§ 14. The provision of the foregoing sections, and the pains and penalties provided for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. And provided, That the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons, or corporation, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith. And provided further, That nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any cause of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State, in the same manner and with the same effect as if this law had not been passed; Provided further, That this act shall take effect from and after January 31, 1900.

**AN ACT to protect workingmen in the right of organization and the purposes thereof.**

Section 1. Be it enacted by the legislature of the State of Texas: That from and after the passage of this act it shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments.

§ 2. And it shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit in which such person may then be engaged; Provided, That such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof.

§ 3. But the foregoing sections shall not be held to apply to any combination or combinations, association or associations of capital, or capital or persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade; Provided, That nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employees; Provided further, that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies.

**CHAPTER 160.****Listing for Taxation.**

**AN ACT to amend article 5066, title 104, chapter 2, Revised Civil Statutes, relating to the rendition, listing and assessment of property for taxation.**

Section 1. Be it enacted by the legislature of the State of Texas: That article 5066, of the Revised Statutes of the State of Texas, be so amended that the same shall hereafter read as follows:

Article 5066. All property shall be listed for taxation between January 1, and June 1 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to

## Trusts; decisions.

be listed or rendered. Any property purchased or acquired on the first day of January, shall be listed by or for the person purchasing or acquiring it. If any property has by reason of any special law, contract or fact been exempt, or have been claimed to be exempted from taxation, for any period or limit of time, and such period of exemption shall expire between January 1, and December 31, of any year, said property shall be assessed and listed for taxes as other property, but the taxes assessed against said property shall be only for the pro rata taxes for the portion of such year remaining after the expiration of such claimed period of exemption and shall be so listed on the tax-rolls, and taxes shall be collected on such property accordingly.

See Anno. Corp. L., Texas, p. 25.

## CHAPTER 172.

## Trusts and Conspiracies.

AN ACT to amend article 5318, title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade.

Section 1. Be it enacted by the legislature of the State of Texas: That article 5318, title 108, of the Revised Civil Statutes of the State of Texas be so amended as to hereafter read as follows:

Article 5318. Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day each firm, person, corporation or association of persons shall continue to do so shall be a separate offense; the penalty in such case may be recovered in the name of the State of Texas in any county where the offense is committed, or where either of the offenders resides, or in Travis county, and it shall be the duty of the attorney-general or the district or county attorney to prosecute for and recover the same.

See Anno. Corp. L., Texas, p. 26, § 5318.

§ 2. This act shall take effect and be in force from and after January 31, 1900, and the same shall not be so construed as to affect any suits pending at the time it takes effect.

## DECISIONS.

(Include 52 S. W. Rep. 792.)

## Promoters.

Where one acting for a promoter purchased machinery before the corporation was organized, and it received and used the same thereafter, it is deemed to have ratified the contract. (Tex. Civ. App.), 47 S. W. Rep. 387 (1898).

## Power to enter a partnership.

Unless specially authorized to do so corporations have no power to enter into partnership with other corporations or persons, and a petition failing to allege such power is insufficient to fix the liability of a corporation, as partner. White v. Pecos' Land & Water Co. (Tex. Civ. App.), 45 S. W. Rep. 207 (1898).

## Officers; compensation.

Where the by-laws fix the salary of an officer, and make no provision for deduction in case of absence or failure to perform the duties, the salary is an incident of the office and the officer, if not removed, is entitled to his salary for the full term. Brown v. Galveston Wharf Co. (Tex. Sup. Ct.), 50 S. W.

Rep. 126 (1899), reversing s. c. (Tex. Civ. App.), 48 S. W. Rep. 41.

Where the by-laws require one officer to perform the duties of another during the latter's absence or inability, but make no provision for compensation, the former is not entitled to compensation for such duties. Id.

An officer of a corporation employed to make a regulation has authority to waive it in a particular case. American Cotton-Bale, etc. Co. v. Forsgard (Tex. Civ. App.), 47 S. W. Rep. 475 (1898).

A charge that a corporation which acted only through agents, might acquire notice of deceit otherwise than by its agents, held, error. Texas Loan & Savings Co. v. Allen (Tex. Civ. App.), 46 S. W. Rep. 883 (1898).

## Directors; power of majority.

Individual directors, or a majority, however great, of stockholders acting separately, cannot bind a corporation to pay for an improvement to its land, but such action must be taken as a body at a properly constituted meeting. Nicholstone City Co. v. Smalley (Tex. Civ. App.), 51 S. W. Rep. 527 (1899).

## TEXAS.

## Decisions.

**Stock; issue; paid up.**

A by-law providing that on the death of a stockholder, his stock shall be paid to his legal representatives, if he has remained in the company one year, and notice of intention to withdraw has been given, is valid, and after a compliance with the conditions, may be enforced by suit against the corporation, if solvent. *Howe Grain & Mercantile Co. v. Jones* (Tex. Civ. App.), 51 S. W. Rep. 24 (1899).

R. S., 1895, art. 665, prohibiting a corporation from employing its assets for any other purpose than to accomplish the objects of its creation does not prevent a corporation purchasing its own stock, since such purchase does not necessarily reduce its capital stock. *Id.*

See Anno. Corp. L., Texas, p. 16.

The promoters of a corporation secured a \$17,000 contract for work and material, and valuable option contract, which were turned over to the corporation after its incorporation, together with land of the value of \$14,000. After incorporation, the net earnings were invested in the business, and about nine months thereafter, \$28,000 in capital stock was divided among the promoters. Held, that in determining whether the stock was fully paid up, the value of the land, the contracts and the net earnings before the issue of the stock should be considered since they are "property actually received," warranting the issue of stock therefor, within Const. 1895, art. 12, § 6. *Cole v. Adams*, Sup. Ct. Tex., 46 S. W. Rep. 790 (1898).

See Anno. Corp. L., Texas, p. 6.

As to creditors, without notice, property conveyed in payment of stock is not to be considered as a payment, except to the extent of its money or actual value. *Cole v. Adams* (Tex. Civ. App.), 49 S. W. Rep. 1052 (1899).

Corporators who are not subscribers for capital stock are not entitled to shares of paid-up capital stock to the full value of the property and effects of the corporation over and above the liabilities of the corporation. An enhancement of the value of the properties of the corporation will not authorize an additional issue of stock to either corporators or subscribers for the stock. *Cole v. Adams* (Tex. Civ. App.), 49 S. W. Rep. 1052 (1899).

Increase in value of property before its conveyance to the corporation by the corporators, contracts for work to be performed by the corporation, secured by the corporators before incorporation, and net profits accruing prior to the issue of stock, may be credited upon the stock in payment or part payment therefor. *Id.*

**Liability of stockholders.**

A stockholder who transfers his stock in good faith, and with no intention to defraud,

while the corporation is solvent, and has the transfer entered upon the books of the corporation, is not liable either to the corporation or to its creditors for unpaid subscriptions to the stock. *Cole v. Adams* (Tex. Civ. App.), 49 S. W. Rep. 1052 (1899).

See Anno. Corp. L., Texas, p. 17, art. 671.

Where stock is issued as fully paid, creditors who had notice, when they extended credit to the corporation, of the manner in which the stock was acquired, cannot recover as upon unpaid subscriptions. *Cole v. Adams* (Tex. Civ. App.), 49 S. W. Rep. 1052 (1899).

**Trust mortgage.**

Foreclosure of bonds by trustee of trust mortgage held to merge all bonds in the judgment, so that individual bondholder cannot thereafter sue on his bonds. *Laing v. Queen City Ry. Co.* (Tex. Civ. App.), 49 S. W. Rep. 136 (1899).

**What constitutes new debt.**

The execution of new notes for an indebtedness existing when a new member came into a corporation, is not the creation of a new debt, within an agreement that no new debt shall be created without the consent of four-fifths of the stock. *King County Land & Live Stock Co. v. Thompson* (Tex. Civ. App.), 51 S. W. Rep. 890 (1899).

**Receivers; insolvency.**

A transfer by an insolvent corporation being void, a person claiming an interest in the property attempted to be transferred may attack the conveyance, although not a creditor, although the result be that none of the creditors will realize anything. *Rogers v. Southern Pine Lumber Co.* (Tex. Civ. App.), 51 S. W. Rep. 26 (1899). When a receiver will be appointed for mortgagee under trust company. *Id.*

Appointment of receivers, Anno. Corp. L., Tex., p. 21.

Equity cannot appoint a receiver for a corporation in a stockholder's suit for fraud or collusion of corporate authorities or ultra vires acts of the directors, but may redress the specific wrongs charged, and enjoin such misconduct. *People's Inv. Co. v. Crawford* (Tex. Civ. App.), 45 S. W. Rep. 738 (1898). When a receiver should be appointed, considered generally. *Id.*

An instruction that a receiver should account for all the property which came into his possession or was capable of being reduced to his possession by ordinary care, held, proper. *Hamm v. J. Stone & Sons' Live Stock Co.* (Tex. Civ. App.), 45 S. W. Rep. 330 (1898).

A director of an insolvent but going concern may, by attachment and levy, gain a preference over other creditors, for a debt

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Decisions.

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incurred by the corporation in good faith, since it was permissible for the corporation to voluntarily prefer one of its creditors. *A. B. Frank Co. v. Berwind* (Tex. Civ. App.), 47 S. W. Rep. 681 (1898).

**Pleading incorporation.**

An allegation that plaintiff is a national banking corporation incorporated under and by virtue of the national banking laws is a sufficient compliance with the requirement of an allegation that it is duly incorporated. *Yill v. First Nat. Bk.* (Tex. Civ. App.), 47 S. W. Rep. 751 (1898).

**Amendment of pleading.**

In an action against corporation by corporate name where petition stated it was an "organization," the allegation of incorporation could be added by amendment, without making it a new proceeding. *Nelson v.*

*Brenham Compress Oil, etc., Co.* (Tex. Civ. App.), 51 S. W. Rep. 514 (1899).

See *Anno. Corp. L., Tex.*, p. 23, § 3000.

**Foreign corporations.**

A petition in an action against a foreign corporation, averring that defendant is a foreign corporation doing business in the State, and has a local agent representing it in the county where the suit is filed, is sufficient to confer jurisdiction, although it is not alleged that such corporation has obtained a permit to do business in the State. *Home Forum Ben. Order v. Jones* (Tex. Civ. App.), 48 S. W. Rep. 219 (1898).

See *Anno. Corp. L., Tex.*, p. 21, art. 1223.

Under Rev. Stat., art. 1194, § 25, a railroad corporation having an agency in one county sued with another company operating a road in another county, may claim privilege of being sued in first county. *Texas & P. Ry. Co. v. Edmisson* (Tex. Civ. App.), 52 S. W. Rep. 635 (1899).

See *Anno. Corp. L., Texas*, p. 21.





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UTAH.

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# UTAH.

## LAWS OF 1899.

### CHAPTER 51.

#### Service of Summons.

AN ACT in relation to the service of summons, and amending section 2948 of the Revised Statutes of Utah, 1898, as follows:

#### Summons, how served.

§ 2948. The summons must be served by delivering a copy thereof, as follows:

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5. If the defendant is a domestic corporation, to the president or head of the corporation, secretary, treasurer, cashier, or managing agent thereof. If no such person can be found within the State, then upon a director of the corporation found within the State. If the defendant is a foreign corporation, or non-resident joint-stock company, or association, to the president, secretary, treasurer, or other officer thereof, or to the person designated by such corporation, company, or association, as one upon whom process may be served. If no such person can be found, then upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station keeper, managing agent, or other agent having the management, direction or control of any property of such corporation, company or association. If none of the persons named in this subdivision can be found in the county in which such action is commenced, then service may be made as provided herein upon such persons in any county in this State.

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See Anno. Corp. L., Utah, p. 23.

### CHAPTER 52.

#### Private Corporations.

AN ACT to amend section 314 of the Revised Statutes, relating to private corporations, as follows:

#### Purpose; incorporators; name.

§ 314. Private corporations may be formed in the manner prescribed in this act for any purpose for which individuals may lawfully associate. The number of incorporators shall not be less than five, one of whom must be a resident of this State. No corporation can take the name of a corporation theretofore organized under the laws of this State, nor of a foreign corporation having complied with the laws of this State so as to entitle it to do business within this State, nor one so nearly resembling the name of any such corporation as to be misleading. The secretary of State may refuse to issue a certificate of incorporation to any association violating the provisions of this act.

See Anno. Corp. L., Utah, p. 9.

### CHAPTER 68.

#### Assessment of Property.

AN ACT to amend section 2513 to read as follows:

#### Railroads, etc., operating in more than one county; other franchises.

§ 2513. All property and franchises owned by railroad, street railway, car, depot, telegraph and telephone companies in this State must be assessed by the State board of equalization as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporation, firms or persons owning or holding them have their principal place of business.

The remainder of this act provides for reports to State board, assessment of franchises, and tax sales.

## DECISIONS.

(Include 58 Pac. Rep. 192.)

**Corporation is a citizen.**

A corporation organized under the laws of Utah is a citizen of the State, under a statute authorizing the location of mining claims, and their conveyance to citizens. *Wilson v. Triumph Consol. Min. Co.*, Sup. Ct. Utah, 56 Pac. Rep. 300 (1899).

**Franchise is a contract.**

A corporate franchise is a contract between the State and the corporation accepting or acting under it. Either party may waive a breach of its conditions; and anything that would constitute a waiver of a breach of contract constitutes a waiver of a breach of the conditions of a franchise. *Dern v. Salt Lake City R. Co.*, Sup. Ct. Utah, 56 Pac. Rep. 556 (1899). As to what constitutes such waiver in case of street railroad franchise, see *Id.*

**De facto corporation.**

A colorable compliance with section 2267 et seq. of the Compiled Laws, 1888, in proceedings for incorporation, followed by commencement of operations by the corporation, constitutes a de facto corporation. *Marsh v. Mathias*, Sup. Ct. Utah, 56 Pac. Rep. 1074 (1899). Where parties are stockholders in a de facto corporation, have dealt with it since its incorporation, and acquiesced in and recognized its powers for a long period, they are estopped from questioning the legality of its formation. *Id.* A bona fide attempt, and the assumption and exercise of corporate functions, is sufficient to constitute a corporation de facto. *Id.* A by-law of such a corporation acquiesced in and acted upon for more than eleven years by the stockholders and officers, must be presumed to have been regularly adopted. *Id.*

**Lease to corporation not in existence.**

Where plaintiff corporation was not in existence when an alleged lease to it was made, no lease could be made to it. *Utah Optical Co. v. Keith*, Sup. Ct. Utah, 56 Pac. Rep. 155 (1899).

**Meetings of directors.**

A meeting of a legally constituted board of directors will be presumed duly called for the business transacted thereat. *Singer v. Salt Lake City Copper Mfg. Co.*, Sup. Ct. Utah, 53 Pac. Rep. 1024 (1898). As a general rule, notice must be given in some way to all directors, of meetings of the board, where the by-laws and rules do not provide

for the time and place of meeting, but there are some exceptions, as where an emergency exists as justifies immediate action on the part of the board, and the giving of notice to all the members is not practicable, or where a director secretes himself in order to prevent a meeting, or is beyond the reach of notice. *Id.* If such emergency does not exist, the action of directors at such a meeting is void. *Id.*

**Dealings of directors with corporation.**

Where there is an absence of want of good faith, fraud and collusion, and the corporation is yet a going concern, no sound principle of law prohibits a stockholder or director from dealing with the corporation. Such contracts are, however, carefully scrutinized in equity. *Singer v. Salt Lake City Copper Mfg. Co.*, Sup. Ct. Utah, 53 Pac. Rep. 1024 (1898).

In a controversy over the affairs of a corporation in which the acts of the directors are involved, and the rights of the stockholders are to be determined, the acts of the officers will be closely scrutinized in equity, and the directors held to a strict measure of care, duty, fidelity and liability. *McIntyre v. Ajax Mining Co.*, Sup. Ct. Utah, 53 Pac. Rep. 1124 (1898).

**Acts of officers.**

A fraudulent location of mining claim by an agent, in the name of a company of which he was manager and superintendent, held to have been the fraud of the company. *Argentine Min. Co. v. Benedict*, Sup. Ct. Utah, 55 Pac. Rep. 559 (1898).

**Compensation of officers.**

Stockholder and officer performing services for it without agreement as to compensation, held estopped by subsequent conduct from thereafter making claim for services. *Pyper v. Salt Lake Amusement Assn.*, Sup. Ct. Utah, 57 Pac. Rep. 533 (1899).

**Forfeiture of shares.**

The validity of the forfeiture and sale of shares of stock depends on a formal compliance with the statute. So held under § 2377, Comp. Laws, 1888 (Rev. Stat. 1898, § 358). Such a levy is not validated by § 2390, Comp. Laws (Rev. Stat. 1898, § 370). *Raht v. Sevier Mining & Milling Co.*, Sup. Ct. Utah, 54 Pac. Rep. 889 (1898). An irregular forfeiture of shares is not void, but voidable, and by subsequent knowledge and

## Decisions.

acquiescence, both the shareholder and the corporation may be estopped to deny its validity. *Id.*

See *Anno. Corp. L., Utah*, pp. 16, 17, §§ 358, 370.

**Unpaid subscriptions a trust fund.**

The property of a corporation, including unpaid stock subscriptions, constitutes a trust fund for the payment of debts, and creates a right against which the Statute of Limitations does not begin to run until the cestui que trust has notice of the repudiation of the trust. So held in reference to a note given for stock subscription. *Crofoot v. Thatcher*, Sup. Ct. Utah, 57 Pac. Rep. 171 (1899).

**Assignment.**

Where a corporation, in making an assignment for the benefit of creditors, prefers

bona fide debts, evidenced by notes on which one of its officers, a minority stockholder, was indorser, and it appears that the result would have been the same even if such indorser had voted against the preference or assignment, such preference does not constitute actual or legal fraud. *Nat. Bank of the Republic v. George M. Scott & Co.*, Sup. Ct., Utah, 55 Pac. Rep. 374 (1898). The corporation may prefer such indebtedness incurred for its sole benefit. *Id.*

**Receivers.**

Where appointment of receiver is revoked as erroneous, the expenses paid out of the fund are only such as would necessarily have been incurred without a receiver. *Ogden City v. Bear Lake & River Water-Works & Irrigation Co.*, Sup. Ct. Utah, 55 Pac. Rep. 385 (1898).

See *Anno. Corp. L., Utah*, p. 24, for appointment of receivers.







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**VERMONT.**

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# VERMONT.

(Legislature did not meet in 1899.)

## LAWS OF 1898.

### No. 19.

#### Fee for Special Charter.

AN ACT requiring the payment of a fee for the granting of special charters.

Section 1. Any body or persons seeking incorporation by special act of the legislature shall, before a bill is introduced for such purpose, deposit with the State treasurer for the use of the State the sum of twenty-five dollars, if such bill does not provide for any capital stock, or if the capital stock provided for by such bill does not exceed ten thousand dollars; fifty dollars in case such capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; one hundred dollars if such capital stock exceeds fifty thousand dollars and does not exceed two hundred thousand dollars; two hundred dollars if such capital stock exceeds two hundred thousand dollars and does not exceed five hundred thousand dollars; three hundred dollars if such capital stock exceeds five hundred thousand dollars and does not exceed one million dollars; and five hundred dollars if such capital stock exceeds one million dollars. If a charter is refused said deposit shall be returned to the person making it.

§ 2. Whenever articles of association are transmitted to the secretary of State, under provisions of chapter one hundred sixty-five, Vermont Statutes, there shall be transmitted therewith for the use of the State the sum of twenty-five dollars, if such articles do not provide for capital stock. If such articles provide for capital stock not exceeding five thousand dollars, the sum of ten dollars shall be so transmitted; if such capital stock exceed five thousand dollars and does not exceed ten thousand dollars, the sum of twenty-five dollars shall be so transmitted; if exceeding ten thousand dollars and not exceeding fifty thousand dollars, the sum of fifty dollars shall be so transmitted; if exceeding fifty thousand dollars and not exceeding two hundred thousand dollars, the sum of one hundred dollars shall be so transmitted; if exceeding two hundred thousand dollars and not exceeding five hundred thousand dollars, the sum of two hundred dollars shall be so transmitted; if exceeding five hundred thousand dollars and not exceeding one million dollars, the sum of three hundred dollars shall be so trans-

mitted; if more than one million dollars, the sum of five hundred dollars shall be so transmitted. In case said articles are not recorded by the secretary of State, but are returned to the parties transmitting them, the money transmitted therewith shall be returned with such articles.

See Anno. Corp. L., Vt., p. 15, ch. 165.

§ 3. The provisions of this act shall not apply to municipal corporations or corporations organized for charitable, educational or religious purposes not for profit. But corporations organized by special act of the legislature for charitable, educational or religious purposes not for profit shall pay to the State treasurer the sum of ten dollars in the manner hereinbefore provided.

§ 4. This act shall take effect December 1, 1898.

(Approved November 29, 1898.)

### No. 68.

#### Change of Domicile.

AN ACT in amendment of section 3734 of Vermont Statutes relating to formation of corporations by voluntary association.

Section 1. Section 3734 of Vermont Statutes is hereby amended by adding at the end thereto the following:

The domicile of a corporation, formed under chapter 165 of Vermont Statutes may be changed from any town of this State in which it may be located to any other town of this State, by a two-thirds vote of the stockholders representing two-thirds of the capital stock, or if it has no capital stock, by a two-thirds vote of all the members present at a meeting duly warned for that purpose, and by transmitting and causing to be recorded in the office of the secretary of State a certificate, signed by the clerk, setting forth the change made and the substance of the vote and causing a certified copy thereof to be recorded in the town clerk's office, where a certified copy of the original articles of association is required to be recorded, and causing a certified copy of the original articles of association, and a certified copy of the certificate hereinbefore referred to, to be recorded in the town clerk's office in the town of the new domicile.

(Approved November 22, 1898.)

## DECISIONS.

(Include those in 44 Atl. Rep. to Oct. 4, 1899.)

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**Transfer of franchise before subscription  
of stock.**

An act created a stock corporation, and authorized it to construct a bridge, but before it had organized, the act of 1888 was passed, providing for a transfer of its rights to a town, and directing that "the directors of said bridge corporation are hereby authorized to make and conclude" such transfer. It was held that the corporators of the bridge company were authorized, without subscribing for stock, to organize the

corporation, elect directors and make the transfer. *Town of Grand Isle v. Kinney*, 70 Vt. 381; s. c., 41 Atl. Rep. 130.

**Liability of directors.**

A director of a corporation, who has nothing to do with its acts of trespass, is not personally liable therefor, where he did nothing to make the company's acts his own. *Davenport v. Newton*, 42 Atl. Rep. 1087.

As to liability of directors, see *Vt. Stats*, §§ 3722, 3723, 3724; *Anno. Corp. L.*, *Vt.*, p. 19.





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VIRGINIA.

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# VIRGINIA.

(Legislature did not meet in 1899.)

## LAWs OF 1897.

### CHAPTER 20.

#### Unpaid Subscriptions.

Section 1. All suits or motions for the recovery of unpaid subscriptions to the stock of any joint-stock company shall be brought in the courts of common law of this commonwealth in the county or corporation where the defendant resides, if he be a resident of this State, or in the case of a joint or partnership subscription, then in the county or corporation in this State in which either of the joint subscribers or any member of the partnership subscribing shall reside; and said courts shall have exclusive jurisdiction to hear and determine all questions involving the validity of such subscriptions, but nothing herein contained shall be construed to deprive courts of chancery of their jurisdiction to settle and wind up the affairs of insolvent corporations or to make assessments on unpaid stock subscriptions.

§ 2. In all cases where it is necessary to resort to a court of equity for the purposes aforesaid, the courts shall direct the trustee, assignee or receiver, as the case may be, to sue at law, when necessary to recover any call or assessment, and the defendant shall

be entitled to a jury where the amount involved exceeds twenty dollars, and said suits shall be governed in all respects by the provisions of this act. All pleas, defenses and evidence which would be admissible if the company were solvent shall be equally admissible and shall have the same effect in law in any action brought after the insolvency of any such company, except where the defense relied upon is an agreement on the part of the corporation not to assess the face value of the stock subscribed, and such agreement was unknown to the creditor at the date of his contract; and this act shall apply to all suits heretofore or hereafter brought where no final judgment or decree on the merits has been rendered. \* \* \*

(Approved December 22, 1897.)

In a suit by creditors against stockholders to compel payment of subscriptions, the decree declared subscriptions valid, fixed stockholders' liability, determined the rights of creditors, and directed an assessment, reserving the right to make further assessments, if necessary. Held, a final decree on the merits, so that the above act, subsequently passed, did not apply to a further assessment in accordance with such decree. *Martin v. South Salem Land Co.* (Sup. Ct., Va.), 33 S. E. Rep. 600 (1899).

## DECISIONS.

(Include 33 S. E. Rep. 930.)

#### Seal.

A corporation may make a contract without the use of a seal in all cases in which this may be done by an individual. *Grubbs v. Nat. Life Maturity Ins. Co.*, 94 Va. 589; 27 S. E. Rep. 464 (1897).

#### Officers.

In a particular case, a corporation was held to have ratified a contract made by an officer. *Richmond Union Pass. Ry. Co. v. Richmond F. & P. R. Co.* (Sup. Ct., Va.), 32 S. E. Rep. 787 (1899).

The stockholders had taken the necessary steps to effect a dissolution of the company, and were endeavoring to arrange and liquidate its indebtedness with the least loss to themselves, and by their action had in effect suspended the functions of the directors. Stockholders whom the company owed for land had agreed to take the land back at the price received for it. Under such circumstances, held, that the board of directors had no power to purchase for the company the stock of one of its shareholders with its property, thereby diminishing its assets, and adding to the burdens of the

## Decisions.

other shareholders. *Augsburg Land & Imp. Co. v. Peffer*, 95 Va. 92; 27 S. E. Rep. 807 (1897).

**Stock; subscriptions.**

When one paid a premium or bonus to a party for procuring for him stock in a certain corporation, and the stock was issued to him directly by the corporation, the person to whom he paid the bonus will be presumed to be the agent of the corporation; and if he was induced to subscribe by material and false representations, he may have the subscription cancelled and recover any assessment paid thereon. *McClanahan v. Ivanhoe Land & Imp. Co.* (Sup. Ct., Va.), 30 S. E. Rep. 450 (1898).

Where a subscriber to stock, on discovery of fraud, affirms the contract and retains the stock, he cannot, on discovery of a new incident in the fraud, disaffirm the contract. Such subsequent discovery merely confirms the previous knowledge of the same fraud. *Wilson v. Hundley* (Sup. Ct., Va.), 30 S. E. Rep. 492 (1898).

That certain subscribers are subsequently allowed by the corporation to withdraw does not constitute such a fraud on the other subscribers as will justify a rescission of their subscription. *Id.* Such would be the rule even if such subscriptions were fictitious or colorable only. *Id.*

A subscription to the capital stock of a corporation is not only an undertaking to the company, but with all the other subscribers; and if a subscriber, who has been induced by fraud to purchase his shares, elects, after the discovery of the fraud, to affirm his contract of subscription, he cannot disaffirm on the insolvency of the corporation, nor can he maintain an action against the corporation for damages occasioned by the fraud. *Id.*

In an action by a receiver of an insolvent corporation on a subscription to stock, the subscriber is estopped from denying the legality of the object of the corporation, where the subscription is lawful on its face. *Cardwell v. Kelly*, 95 Va. 570; 28 S. E. Rep. 953 (1898).

**Creditors; trust fund.**

A deed of trust conveying all the property of a corporation for the benefit of all who are or may be holders of stock of a certain issue does not create a trust fund for the benefit of creditors. *Roanoke St. Ry. Co. v. Hicks* (Sup. Ct., Va.), 32 S. E. Rep. 295 (1898).

**Confession of judgment.**

A confession of judgment by a corporation for an antecedent debt creates an illegal preference within the prohibition of section

1149 of the Code, and the lien created by it inures to the benefit, ratably, of all the creditors of the corporation then existing. *Yate v. Commercial Bldg. Assn.* (Sup. Ct., Va.), 33 S. E. Rep. 382 (1899).

See Anno. Corp. L., Va., p. 19.

**Actions; election of debtors.**

An individual acting as agent for a corporation, having disclosed his principal, contracted on behalf of the corporation, which accepted all the benefits thereof, and the credit was extended to the corporation and not to the agent. The corporation ceased to do business, and the creditor sued the agent, but although such action was not formally dismissed, it was not prosecuted. Held, that no such election of debtors was made, that the creditor was barred from bringing an action on the same contract against the former corporation, while the other suit was pending. *Richmond Union Pass. Ry. Co. v. N. Y. Sea Beach Ry. Co.*, 95 Va. 386; 28 S. E. Rep. 573 (1897).

**Service of process where corporation has expired.**

Code, section 1103, providing that when any corporation shall expire, or its corporate rights shall have ceased, it may sue and be sued as before, was amended by adding that notice to or process against it shall be sufficiently served by publication once a week for four successive weeks. Held, that service by publication is additional, and that service on the former president of a corporation that has ceased to exist is sufficient. *Richmond Union Pass. Ry. Co. v. N. Y. Sea Beach Ry. Co.*, 95 Va. 386; 28 S. E. Rep. 573 (1897).

See Anno. Corp. L., Va., p. 9, § 1103.

**Foreign corporations.**

Courts will not interfere with the management of the internal affairs of a foreign corporation. This rule is not affected by provisions of the statute, requiring a foreign corporation doing business in the State to designate an agent on whom process against it may be served. *Taylor v. Mutual Reserve Fund Life Assn.* (Sup. Ct., Va.), 33 S. E. Rep. 385 (1899).

Where the act complained of affects the complainant solely in his capacity as a member of the corporation, whether it be as stockholder, director, president or other officer, and is the act of the corporation, whether acting in stockholders' meeting or through its agents, the board of directors, that then such action is the management of the internal affairs of the corporation. Where, however, the act affects the complainant's individual rights only, then our courts will take jurisdiction, whenever the cause of action arises here. *Id.*





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**WASHINGTON.**

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# WASHINGTON.

## LAWS OF 1899.

### CHAPTER 23.

#### Blacklisting.

AN ACT for the protection of employees, and to prohibit the practice of "blacklisting," and providing penalties for its violation.

Section 1. Every person in this State who shall wilfully and maliciously send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this State or elsewhere, and every person who shall wilfully and maliciously "blacklist," or cause to be "blacklisted," any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of a misdemeanor and punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days, nor more than one year, or by both such fine and imprisonment.

### CHAPTER 32.

#### Taxation of Persons Removing from County.

AN ACT relating to the assessment and collection of taxes.

Section 1. If any person, firm or corporation shall remove from one county to an-

other in this State, personal property which has been assessed in the former county for a tax which is unpaid at the time of such removal, the treasurer of the county from which the property is removed shall certify to the treasurer of the county to which the property has been removed a statement of the tax, together with all delinquencies and penalties.

§ 2. The treasurer of any county of this State shall have the power to certify a statement of taxes and delinquencies of any person, firm, company or corporation, or of any tax on personal property, together with all penalties and delinquencies, which statement shall be under seal and contain a transcript of the warrant of collection, and so much of the tax roll as shall effect the person, firm, company or corporation or personal property to the treasurer of any other county of this State, wherein any such person, firm, company or corporation has any real or personal property.

§ 3. The treasurer of any county of this State receiving the certified statement provided for in sections one and two of this act, shall have the same power to collect the taxes, penalties and delinquencies so certified as he has to collect the personal taxes levied on personal property in his own county, and as soon as the said taxes are collected they shall be remitted, less the cost of collecting same, to the treasurer of the county to which said taxes belong, by the treasurer collecting them, and he shall return a certified copy of the certified statement to the auditor of the county to which the taxes belong, together with a certified statement of the amount remitted to the said treasurer.

See Anno. Corp. L., Wash., p. 27, for taxation generally.

### CHAPTER 58.

#### Foreign Corporation to File Articles.

AN ACT relating to foreign corporations and imposing a penalty and repealing conflicting laws.

Section 1. Any foreign corporation doing business in this State which shall fail to comply with the provisions of sections 1525 and 1526 of 1 Hill's Annotated Statutes and Codes of Washington, shall be subject to a penalty of two hundred and fifty dollars to be recovered in a civil action to be instituted by the attorney-general in the name of

## Interest; decrease of stock.

the State of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action.

§ 2. All penalties so recovered shall be paid into the general fund of the State treasury.

See Anno. Corp. L., Wash., p. 19.

**CHAPTER 80.****Establishing a Legal Rate of Interest.**

AN ACT establishing the legal rate of interest in the State of Washington, to prevent usury, and to provide for the establishment of the rate of interest on public warrants.

Section 1. Every loan or forbearance of money, goods or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this act.

§ 2. Any rate of interest not exceeding twelve (12) per centum agreed to in writing by the parties to the contract, shall be legal, and no person shall directly or indirectly take or receive in money, goods or thing in action, or in any other way, any greater interest sum or value for the loan or forbearance of any money, goods or thing in action than twelve (12) per centum per annum.

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§ 6. Judgments hereafter rendered founded on written contracts, providing for the payment of interest until paid at a specific rate, shall bear interest at the rate specified in such contracts, and not in any case, however, to exceed ten per cent. per annum; Provided, That said interest rate is set forth in the judgment; and all other judgments shall bear interest at the rate of six per centum per annum from date of entry thereof.

§ 7. If a greater rate of interest than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore, be void; but if in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the plaintiff shall only recover the principal, less the amount of interest accruing thereon at the rate contracted for, and the defendant shall recover costs; and if interest shall have been paid, judgment shall be for the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest. And the acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest contracted for by the transaction of any agent the principal shall be

held thereby to the same extent as though he had acted in person. And where the same person acts as agent of the borrower and lender, he shall be deemed the agent of the lender for the purposes of this act.

**CHAPTER 106.****Decrease of Capital Stock.**

AN ACT to amend section 1515 of Hill's Annotated Codes and Statutes, to read as follows:

§ 1515. Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital; Provided, That the deposits in any trust company or banking corporation shall not be included in ascertaining the debts and liabilities of such trust company or banking corporation for the purposes of this section: Provided, further, That this act shall not relieve such trust company or banking corporation of the stockholders or any such trust company or banking corporation from liability, although contingent, or remote, incurred or entered into by such trust company or banking corporation prior to the reduction of its capital, including liability for deposits: Provided further, That before any banking corporation or trust company can reduce its capitalization a notice in writing must be mailed to the last-known post-office address of its depositor setting forth the fact that the said banking corporation or trust company intends to decrease its capitalization, showing the amount of its capitalization and the amount to which it intends to decrease same, and proof of the mailing of such notices shall be made by affidavit of the party mailing the same, showing the names and addresses of the persons to whom mailed.

See Anno. Corp. L., Wash., p. 17.

**CHAPTER 149.****Negotiable Instruments.**

AN ACT relating to negotiable instruments.

This act is a complete revision and codification of the law of negotiable instruments, substantially as proposed by the commission on uniformity of legislation, and heretofore adopted in several States, including the State of New York. It is too long to come within the purview of this work, and the title only is inserted for reference.

## Decisions.

## DECISIONS.

(Include 58 Pac. Rep. 192.)

**Powers of officers.**

Authority to the president and secretary of a corporation to sign its name as surety to a bond for a certain amount does not authorize the execution of a bond providing for liquidated damages. *Roberts v. Washington Water Power Co.*, 19 Wash. 392; 53 Pac. Rep. 664 (1898).

**Rights of creditors.**

A complaint by a stockholder and creditor to enjoin the collection of an alleged collusive judgment obtained by the treasurer against the corporation, held, not demurable in *Cross v. Johnson*, Sup. Ct. Wash., 54 Pac. Rep. 1000 (1898).

A creditor to whom property of a corporation has been sold in payment of his debt, in a suit brought for the property, cannot attack the validity of the corporation. *Carroll v. Pacific Nat. Bk.*, Sup. Ct. Wash., 54 Pac. Rep. 32 (1898). Order appointing a receiver by a court having jurisdiction cannot be collaterally attacked. *Id.*

**Insolvency.**

The priority of creditors and their rights generally in payment of claims against an insolvent corporation, determined. *Manhattan Trust Co. v. Seattle Coal & Iron Co.*, 19 Wash. 493; 53 Pac. Rep. 951 (1898).

Dissolution, Anno. Corp. L., Wash., p. 17; receivers, p. 22.

Where stock in an insolvent corporation was sold to the corporation in consideration of certain of its notes, the vendor of the stock is entitled to satisfaction of his claim out of the assets after the claims of all the creditors except those of stockholders for shares of stock are satisfied. *Van Brocklin v. Queen City Printing Co.*, 19 Wash. 552; 53 Pac. Rep. 822 (1898).

**Receivers.**

Where corporate property is being mismanaged, and is in danger of being lost to the stockholders and creditors through the collusion and fraud of its officers and directors, or mismanagement and waste, courts of equity have inherent powers to appoint a receiver. *Cameron v. Groveland Imp. Co.*, Sup. Ct. Wash., 54 Pac. Rep. 1128 (1898).







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**WEST VIRGINIA.**

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# WEST VIRGINIA.

[No laws were passed during the session of 1899, which come within the general plan of this work.]

## DECISIONS.

(Include 33 S. E. Rep. 930.)

### **Ratification of contracts made by promoters.**

While a corporation cannot ratify contracts made in its name or behalf, before it has life, it may exercise its power to make contracts when it comes into existence, by accepting or adopting such contracts. *Richardson v. Graham* (Sup. Ct., W. Va.), 30 S. E. Rep. 92 (1898).

### **General powers; by-laws.**

A corporation has not the power, by by-laws of its own enactment, to disturb or divert rights which it has created, or to impair the obligation of its contracts, or to change its responsibility to its members, or to draw them into new and distinct relations; and such by-laws are void. *Savage v. People's Building, Loan & Savings Assn.* (Sup. Ct., W. Va.), 31 S. E. Rep. 991 (1898).

### **Directors; contracts with; actions against.**

A contract with a director, which has not been ratified, is voidable at the instance of the stockholders, at any time before it is completely executed, but in such case, the director should be compensated for whatever labor or material he has furnished in part performance. *Griffith v. Blackwater Boom & Lumber Co.* (Sup. Ct., W. Va.), 33 S. E. Rep. 125 (1899).

The directors of a corporation cannot separately and individually give consent to or make a contract to bind the corporation. They can act only as a board, their power being only joint. *Id.*

A contract between a corporation and its officers is not void *per se*, but is merely voidable at the option of the corporation, provided the option is exercised within a reasonable time under the circumstances of the case. This more especially relates to executed contracts. The reasonable time as to executory contracts would be before they were executed. *Id.* But if a partly executed contract is avoided before its final execution, the executing party should be placed in

status quo, in the absence of fraud, by compensation in the nature of a quantum meruit for money and labor expended under such contract. *Id.*

The directors of a corporation have no power to direct the assignment of the entire property owned by the corporation, to a trustee for the payment of its creditors, without the consent of its stockholders. *Kyle v. Wagner* (Sup. Ct., W. Va.), 32 S. E. Rep. 213 (1898).

Where suit in equity is brought by certain stockholders against the directors, and such directors, the president, and all the stockholders are before the court, it is unnecessary to make the corporation a party by name, the object of the suit being to protect the interest of the stockholders from the unauthorized acts of the directors. *Id.*

### **Officers; compensation.**

The general rule everywhere denies compensation to the president of a private corporation, unless it be authorized by the proper authority of the corporation, and the law raises no implied promise to compensate directors or president, in the absence of provision in by-law or order. *Ravenswood S. & G. Ry. Co. v. Woodyard* (Sup. Ct., W. Va.), 33 S. E. Rep. 285 (1899).

As the law does not imply an agreement to pay for such services in order for him to recover compensation for them, he must at least show an antecedent, valid agreement to pay for them. *Id.*

Even where by-laws provide that officers of a private corporation shall receive such compensation as shall be determined at an annual meeting of the stockholders, or at a special meeting called for that purpose, and none are ever so fixed, an officer will not be entitled to recover for services in the absence of an agreement to pay him. *Id.*

In West Virginia the statute (Code, ch. 53, § 53; Anno. Corp. L., W. Va., p. 22) also provides that "there shall be no compensation for services rendered by the president

## Decisions.

or any director, unless it be allowed by the stockholders." *Id.*

The directors in this case allowed compensation for past services, when those services did not call for compensation under the law when rendered; and the directors having no authority to charge the assets with a debt when there was no debt, their action would be ultra vires. *Id.*

Where such unlawful appropriation is made, it may be repudiated by the corporation, or its receiver, and the sum wrongly expended as compensation for past services of an officer may be recovered back. *Id.*

Even where there is such prior authority, it is invalid, if his own vote is essential to its passage. (Code, ch. 53, § 52; Anno. Corp. L., W. Va., p. 22.) *Id.*

**Increase of stock.**

Under section 23, chapter 53, Code (Anno. Corp. L., W. Va., p. 18), the increase of capital stock of a corporation is entirely under the control of the board of directors for the time being, and the only limitation upon the board is "that the maximum capital be not exceeded." *Greenbrier Industrial Exposition v. Ocheltree* (Sup. Ct., W. Va.), 30 S. E. Rep. 78 (1898).

**Insolvency; pending contracts.**

Where an insolvent corporation is forced into liquidation and dissolution, all its executory contracts perish with it, for this is an implied condition of their execution. *Griffith v. Blackwater Boom & Lumber Co.* (Sup. Ct., W. Va.), 33 S. E. Rep. 125 (1899).

A receiver is not bound to carry out executory contracts of the corporation, but may disregard them. *Id.* The power to reject or adopt contracts, to accept those which are of advantage to the trust estate, and reject the burdensome ones, is restricted to the receiver. The rule is not reciprocal. *Id.*

The court may order the receiver to complete unfinished contracts, if by so doing the interests of all parties will be better conserved. *Id.*

**Dissolution; parties.**

In a suit to wind up the affairs of a corporation, the stockholders are proper and necessary parties. *Styles v. Laurel Fork Oil & Coal Co.* (Sup. Ct., W. Va.), 32 S. E. Rep. 227 (1898).

**Service of process.**

Service of process upon the president of defendant corporation, who is attorney for the plaintiff in the suit, is not void, but voidable upon proper exception theret. *United States Blowpipe Co. v. Spencer* (Sup. Ct., W. Va.), 33 S. E. Rep. 342 (1899).

**Pleading, who may verify.**

Who may verify a pleading for a corporation. *Quesenberry v. People's Bldg., Loan & Savings Assn.* (Sup. Ct., W. Va.), 30 S. E. Rep. 73 (1898).

**Foreign corporations; receivers for; action against.**

Circuit courts of this State are, pursuant to sections 58, 59, chapter 53, Code (Anno. Corp. L., W. Va., p. 23), in proper cases, to appoint receivers of the affairs of foreign corporations who have done business, acquired property and contracted debts in the State. *Norwich v. Iron Works*, 25 W. Va. 184; superseded by ch. 39, L. 1885; *Swing Bentley & Gerwig Furniture Co.* (Sup. Ct. W. Va.), 31 S. E. Rep. 925 (1898).

A receiver, trustee or assignee of a dissolved foreign corporation, appointed in the State of its domicile, may institute in the courts of this State suits in his own or the corporate name, for debts or claims due such corporation. *Swing v. Bentley & Gerwig Furniture Co.* (Sup. Ct., W. Va.), 31 S. E. Rep. 925 (1898); *Same v. Parkersburg veneer Panel Co.*, *id.* 926.

A statute merely enabling a foreign corporation to hold property or do business in this State does not make it a domestic corporation, and it may be proceeded against by attachment as a foreign corporation. *Savage v. People's Building, Loan & Savings Assn.* (Sup. Ct., W. Va.), 31 S. E. Rep. 96 (1898); *Quesenberry v. People's Bldg., Loan & Savings Assn.* (Sup. Ct., W. Va.), 30 S. E. Rep. 73 (1898).

A suit may be brought against it in court wherein it has estate or debts due it. It is a non-resident under Code 1891, chapter 12 clause 3. *Quesenberry v. People's Bldg. Loan & Savings Assn.*, *supra*.

A return of service of a summons in an action against a foreign insurance or other corporation, upon an attorney appointed to it to accept service of process, must show that he is the attorney so appointed to accept service of process. *Adkins v. Globe Fire Ins. Co.* (Sup. Ct., W. Va.), 32 S. E. Rep. 1 (1898).





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WISCONSIN.

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# WISCONSIN.

## CONSTITUTION OF WISCONSIN—1848.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Declaration of Rights.

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#### ARTICLE I.

##### Declaration of rights.

§ 12. No \* \* \* law impairing the obligation of contracts, shall ever be passed;  
\* \* \*

Laws creating corporations may be altered or repealed. Art. XI, § 1, and note.

Under the decision of the United States Supreme Court in Dartmouth College v. Woodward, and subsequent cases, this court must hold that charters granted to private corporations, including railroad companies, are contracts. Atty.-Gen. v. Ry. Co., 35 Wis. 428.

While a statute, making railroad companies liable to laborers employed by contractors in building their roads, is in force, contracts for such labor are let. Held, that the right of such laborers against the company become vested and cannot be impaired by subsequent legislation. Streubel v. R. R. Co., 12 Wis. 87.

A statute conferring a franchise is not to be regarded as a contract on part of State unless

such was intention of legislature. Chapin v. Crusen, 31 Wis. 209.

Where a charter granted by legislature, or the Constitution, or a law of the State in force when such charter was granted, reserves to the legislature power to alter and amend or withdraw any franchise or privilege granted by such charter, this reservation qualifies the grant; and a subsequent exercise of the reserved power is not an act impairing obligation of a contract. Ry. Co. v. Supervisors, 35 Wis. 257.

Corporations are subject to such rulings and regulations as the legislature may see fit to adopt. Ry. Co. v. Milwaukee, 72 N. W. Rep. 1118.]

§ 13. The property of no person shall be taken for public use without just compensation.

[Incidental injury to property is not a taking of it. Alexander v. Milwaukee, 16 Wis. 247. And a landowner is not entitled to compensation from railroad company for consequential injury to his lands unless there has been an actual taking or physical interference with some part of it. Heiss v. R. R. Co., 69 Wis. 555; s. c., 34 N. W. Rep. 916. See Hanlin v. Ry. Co., 61 Wis. 515; s. c., 21 N. W. Rep. 623.

The question of necessity is for the legislature to decide. Smeaton v. Martin, 57 Wis. 364; s. c., 15 N. W. Rep. 403.

A city council has no power to give a railroad right to use a street without making compensation to abutting owners. Pomeroy v. R. R. Co., 16 Wis. 640.

Just compensation is a condition precedent to the delegation of the power to take. Sherman v. R. R. Co., 40 Wis. 645; Shepardson v. R. R. Co., 6 id. 605; Loop v. Chamberlain, 20 id. 135; Thien v. Voegtiander, 3 id. 461.]

#### ARTICLE IV.

##### Legislative.

§ 31. The legislature is prohibited from enacting any special or private laws in the following cases:

\* \* \* \* \* \* \* \* \* \* \*  
Seventh. For granting corporate powers or privileges, except to cities.

Above section is an amendment, adopted in 1871.

[An act extending the life of a corporation created by special act before above amendment, is not the granting of corporate powers and privileges within meaning of that amendment, which prohibits the enactment of special or private laws for that purpose. Imp. Co. v. Holway, 87 Wis. 584; s. c., 59 N. W. Rep. 126.

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Corporations — Const., Art. iv, § 32; Art. viii, § 3; Art. xi, §§ 1, 4, 5.

This section relates only to acts of incorporation thereafter to be granted. It does not impair the power of alteration and repeal reserved by Constitution in respect to charters granted when this amendment was adopted. *Atty.-Gen. v. R. R. Cos.*, 35 Wis. 425.

No corporation, except cities, can now be created by special statutes, and charters existing under general statutes, passed since the adoption of this amendment, can be amended by general laws only. *Boom Co. v. Reilly*, 44 Wis. 295.]

**§ 32.** The legislature shall provide general laws for the transaction of any business that may be prohibited by section thirty-one of this article, and all such laws shall be uniform in their operation throughout the State.

Above section is an amendment, adopted in 1871. See note to preceding section.

### ARTICLE VIII.

#### Finance.

**§ 3.** The credit of the State shall never be given, or loaned, in aid of any individual, association, or corporation.

[This section is a limitation upon the power of the State itself, and not a prohibition upon the legislature to authorize municipalities to loan their credit. *Clark v. Janesville*, 10 Wis. 136.]

### ARTICLE XI.

#### Corporations.

Section 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts, enacted under the provisions of this section may be altered and repealed by the legislature at any time after their passage.

See art. I, § 12. Organization of corporations. §§ 1771-1791. Creation of banks. Art. XI, §§ 4, 5. Special or private laws prohibited. Art. IV, §§ 31, 32. Amendments must be by general laws. *Id.*, note. Powers may be restricted. § 1768.

All special acts of the legislature granting corporate powers are subject to alteration or repeal. *Pratt v. Brown*, 3 Wis. 603; *Plank Road Co. v. Reynolds*, *id.* 287; *Blair v. R. R. Co.*, 20 *Id.* 254; *State v. Gas Light Co.*, 29 *Id.* 454.

Reservation of power to alter, amend or withdraw any franchise or privileges granted by charter qualifies the grant, and subsequent exercise of the reserve power is not within prohibition of Federal Constitution, as an act impairing the obligation of a contract. *Ry. Co. v. Supervisors*, 85 Wis. 257; *Atty.-Gen. v. Ry. Co.*, *id.* 425.

A corporate charter cannot, under power to alter, be changed into one of an entirely different

kind, but may be changed in detail, so long as the identity of the corporation remains. *Id.*; *Hinckley v. R. R. Co.*, 38 Wis. 194; *Ackley v. Ry. Co.*, 36 *Id.* 252; *Pelk v. Ry. Co.*, 94 U. S. 164; *Munn v. Illinois*, *id.* 113.

This power to alter or repeal charters of corporations does not affect their rights in their property, other than the franchises, but such rights remain inviolable. *Atty.-Gen. v. Ry. Co.*, *supra*. It seems that valid alterations in its charter are obligatory upon a private corporation without its assent thereto. But if otherwise, it must accept, or discontinue its operations as a corporate body. *Id.*

This section is aimed at the evils of special legislation. *Clark v. Janesville*, 10 Wis. 136.

Fact that one legislature has conferred upon a city or county power to grant to an existing corporate body a franchise, or to create a corporation with certain franchises and powers, does not deprive a subsequent legislature of its power, under above section, to take away the power so granted or to alter or repeal the acts done under such delegated authority. *State v. Hillbert*, 72 Wis. 184; *s. c.* 39 N. W. Rep. 326.

Where it is alleged that act of legislature or of a municipality granting a franchise to a corporation creates an irrevocable contract, such act will be strictly construed in favor of the State or municipality. *Id.*

A corporation that had used its name for ten years before plaintiff corporation, with a similar name, commenced doing business in the State, could not be held to have wrongfully used the name of the plaintiff. *Foresters v. Commr. of Ins.*, 73 N. W. Rep. 326.]

**§ 4.** The legislature shall not have power to create, authorize or incorporate, by any general, or special law, any bank or banking power or privilege, or any institution or corporation having any banking power or privilege whatever, except as provided in this article.

See art. IV, §§ 31, 32; art. XI, §§ 1, 5.

**§ 5.** The legislature may submit to the voters, at any general election, the question of "bank," or "no bank," and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders: Provided, That no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State, at some general election, and been approved by a majority of the votes cast on that subject at such election.

See art. XI, §§ 1, 4. Corporation not to engage in banking business without authority. § 2021.

[Above section construed. *Roane Iron Co. v. Wisconsin Trust Co.*, 74 N. W. Rep. 818.]

Record of certificates; taxation. R. S., §§ 763, 1034, 1038, 1040, 1041.

## REVISED STATUTES - 1898.

[Note.—The following statutes are extracts from Revised Statutes of 1898. The arrangement and section numbers contained in such statutes are followed as far as possible. The amendments and supplemental acts of 1899 are inserted in their proper places. The notes at the end of the sections refer to the revisions of 1858, 1878 and other intermediate or subsequent acts from which the sections were derived. The annotations of decisions are brought down to those included in 101 Wisconsin Reports and 79 Northwestern Reports.]

### PART I.

#### Internal Administration of the State.

##### TITLE IX. COUNTY GOVERNMENT.

###### CHAPTER XXXVII.

###### Of County Officers.

Sec. 763. County register shall record all certificates of corporations.

§ 763. He [the register of deeds] shall keep a book in which shall be recorded all certificates of organization of corporations, and all amendments thereof filed or required by law to be recorded in his office, and an alphabetical index of the names of such corporations, with a reference to the number and page of the volume where such writings are recorded respectively. (R. S. 1878, § 763.)

Corporation must file its articles. § 1772 (7). Certified copy as evidence. § 4181.

##### TITLE XIII. TAXATION.

###### CHAPTER XLVIII.

###### Assessment.

###### Sec. 1034. Property subject to assessment.

1038. Property exempt from taxation.

1040. Personal property liable to taxation.

1041. Residence of corporations for purpose of taxation.

1042. Bank stock, where taxed.

###### Property subject to assessment.

§ 1034. Taxes shall be levied upon all property in this State, except such as is exempted therefrom. \* \* \* \* (1868, ch. 139, § 1.)

Corporate stock is personal property. § 1751. See Act 4, relating to special assessments on corporate property.

[Taxation of railroads by requiring payment of a license fee on their gross earnings does not violate the constitutional rule of uniformity.

Kneeland v. Milwaukee, 15 Wis. 454; R. R. Co. v. Supervisors, 9 id. 431.

[As to distinction between assessment and taxation, see Hale v. Kenosha, 29 Wis. 599.]

###### Property exempt from taxation.

§ 1038. The property in this section described is exempt from taxation, to-wit:

9. Stock in any corporation in this State which is required to pay taxes upon its property in the same manner as individuals. (1868, ch. 130, § 2.)

[In this State capital stock and shares of stock constitute separate and distinct property interests and are the subjects of taxation independently of each other. Such taxation is not double taxation, the capital being assessed to the corporation and the shares to the stockholders. Second Ward Savings Bk. v. Milwaukee, 94 Wis. 587; s. c., 69 N. W. Rep. 359.]

###### Personal property liable to taxation.

§ 1040. All personal property shall be assessed in the assessment district where the owner resides, except as otherwise provided. If such owners be non-residents of the State, or foreign associations or corporations, but having an agent residing in this State in charge of such property, then the same shall be assessed in the district where such agent resides; otherwise in the district where the same is located, except as otherwise provided. \* \* \* No change of location or sale of any personal property after the first day of May in any year shall affect the assessment made in such year. \* \* \* (1868, ch. 130, § 20; 1871, ch. 33, § 1; 1872, ch. 148; 1893, ch. 179.)

Corporate stock is personal property. § 1751.

[As to what constitutes residence for purpose of taxation, see Kellogg v. Oshkosh, 14 Wis. 623.

The franchises of a corporation are to be regarded, for the purposes of taxation, as personal property. State v. Anderson, 90 Wis. 550; s. c., 63 N. W. Rep. 746. And franchises and other personal property may be assessed as an entirety. Id.]

###### Residence of corporation for purpose of taxation.

§ 1041. The residence of an incorporated company, for the purposes of the preceding section, shall be held to be in the assessment district where the principal office or place of business of such company shall be. (R. S. 1858, ch. 18, § 13.)

[The franchises and other property, real and personal, of a street railway company are an entirety and must be assessed where its principal office or place of business is. State v. Anderson, 90 Wis. 550, 564; s. c., 63 N. W. Rep. 746.

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Trusts and monopolies — R. S., §§ 1042, 1747e-1747g.

The provisions of section 1772, post, which expresses that the articles of incorporation shall state "the name and location" of the corporation, does not authorize the fixing the place where the principal office or place of business of the corporation shall be for the purposes of taxation. *Milwaukee Steamship Co. v. Milwaukee*, 83 Wis. 590; s. c., 53 N. W. Rep. 839.]

### **Bank stock, where taxed.**

§ 1042. All the stock of every bank or banking association, whether organized under authority of any law of this State or of any act of the congress of the United States, and all the capital stock of every person, association or other corporation whatever, engaged in the business of banking, buying and selling exchange, and receiving deposits, shall be assessed and taxed in the county and assessment district where such bank or banking association or where such person, association or corporation is located for the transaction of business.

[See *Ruggles v. Fond du Lac*, 53 Wis. 436; s. c., 10 N. W. Rep. 565. An act for the assessment of the capital stock of banks, though impairing the rule of uniformity, is valid, as it conforms to the law of congress, which is supreme. *Van Slyke v. State*, 23 Wis. 655.]

## **TITLE XVIII. BUSINESS REGULATIONS.**

### **CHAPTER 84a.**

#### **Trusts and Monopolies.**

**Sec. 1747e. Unlawful contracts; conspiracies.**

1747f. Injunction; pleading; practice.

1747g. Examination of adverse party; books and papers; contempt.

1747h. Partnership included.

#### **Unlawful contracts; conspiracies.**

§ 1747e. Every contract or combination in the nature of a trust or conspiracy in restraint of trade or commerce is hereby declared illegal. Every person who shall combine or conspire with any other person to monopolize or attempt to monopolize any part of the trade or commerce in this State shall forfeit for each such offense not less than fifty dollars nor more than three thousand dollars. Any such person shall also be liable to any person transacting or doing business in this State for all damages he may sustain by reason of the doing of anything forbidden by this section. (L. 1893, ch. 219, §§ 1, 2 and 5.)

See §§ 1791j-1791m, post, p. 28, Trusts, Pools and Conspiracies.

#### **Injunction; pleading; practice.**

§ 1747f. The several circuit courts may prevent or restrain, by injunction or otherwise, the formation of any such contract or combination or the execution of the purposes thereof. The several district attorneys shall, upon the advice of the attorney-general, who may appear as counsel in any such case, institute such actions or proceedings as he shall deem necessary to prevent or restrain a violation of the provisions

of the preceding section, which shall be begun by way of information or complaint as in ordinary actions, setting forth the cause and grounds for the intervention of the court, and praying that such violation whether intended or continuing, shall be enjoined or otherwise prohibited. When the parties informed against or complained of shall have been served with a copy of the information or complaint and cited to answer the same the court shall proceed, as soon as may be in accordance with its rules, to the hearing and determination of the case; and pending the filing of the answer to such information or complaint may, at any time, upon proper notice, make such temporary restraining order or prohibition as shall be just. Whenever it shall appear to the court that the ends of justice require that other persons should be made parties to the action or proceeding the court may cause them to be brought in in such manner as it shall direct. (Id., §§ 2, 4.)

See §§ 1791j-1791m, post, pp. 28, 29.

#### **Examination of adverse party; books and papers; contempt.**

§ 1747g. The examination of any party, or if a corporation be a party, of the president, secretary, or other principal officer or the general managing agent thereof, or of the person who was such president, secretary, officer or agent at the time of the occurrence of the facts made the subject of the examination, or of any person acting for another or for a corporation or partnership, other than as a witness on trial, may be taken by deposition at the instance of the attorney-general in any such action or proceeding at any time intermediate the commencement thereof and final judgment. Such deposition shall be taken within the State before a judge at chambers on a previous notice to such party, and any other adverse party or the attorney thereof of at least five days, and may be taken without the State in the manner provided in these statutes for taking other depositions. The attendance of the party to be examined may be compelled by subpoena, without payment of witness' fees, and the examination shall be subject to the same rules as govern that of other witnesses; but he shall not be compelled to disclose anything not relevant to the controversy. If the examination shall be taken before issue joined the notice of taking it shall be accompanied by the affidavit of the attorney-general, district attorney or some party stating the general nature and object of the action, that discovery is sought to enable the party to plead and the points upon which such discovery is desired; such examination shall be confined to the discovery of the facts relevant to the points so stated unless the court or the presiding judge thereof, on motion and one day's notice, shall, before the examination is begun, by order further limit

## Corporate powers — R. S., §§ 1747h, 1748.

the scope thereof. Such examination shall not preclude the right to another examination after issue is joined upon all the questions in the cause, and the party examining shall in all cases be allowed to examine upon oral interrogatories. The examination shall not be compelled in any other county than that of the party's residence; provided, that whenever the defendant is a non-resident of the State his deposition may be taken in the county in which the action is pending if personal service of notice and subpoena can be made upon him therein. In any such examination the judge or commissioner before whom the same is had shall have authority to compel the party examined to answer all questions relevant to the issues and shall, on application by the attorney-general or district attorney, compel the production by such party of all books, papers and records relevant and pertinent to the issues. If any defendant or his agent who is lawfully required to appear and testify on such examination or to produce such books, papers or records shall, either within or without the State, neglect or refuse to do so, he may be punished as for contempt, and the pleading of any such defendant may, in the discretion of the court, be stricken out and judgment rendered against him according to the prayer of the complaint. (Id., §§ 6, 7.)

See §§ 1791j-1791m, post, p. 28.

**Partnership included.**

§ 1747h. The word "person" wherever used in the three next preceding sections shall be deemed to include, besides individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States, any of the territories of this or any other State or of any foreign country; provided, that nothing therein shall be construed to affect labor unions, or any other association of laborers organized for the purpose of promoting the welfare of its members, nor associations or organizations intended to legitimately promote the interests of trade, commerce or manufacturing in this State. (Id., §§ 8, 9.)

**TITLE XIX. CORPORATIONS.**

Ch. 85. Of general provisions relating to corporations.  
86. Of the organization of corporations.  
94. Of banks and banking.

**CHAPTER LXXXV.****General Provisions.**

**Sec. 1748.** General powers.  
1749. Quorum of directors; of stockholders.  
1750. Principal office to be in State; books to be produced; statement of assets to be filed.  
1751. Capital stock, nature and transfer of.  
1752. Transfer on books, how compelled.  
1753. Consideration for which stock may issue.  
1754. Subscriptions, how called in.

Sec. 1755. Stockholders' liability on reduction of stock; contribution. 1756. Stockholder, release from liability. 1757. Stockholder may inspect books; creditor entitled to information. 1758. Stockholder entitled to credit in actions against them. 1759. General and stock record; forfeiture. 1759a. Preferred stock; interest. 1760. Vote; proxies; shares in trust. 1761. Irregular meetings. 1762. Election of officers. 1763. Insolvency; suspension for a year. 1764. Continuance after dissolution. 1765. Dividends not to be paid, when. 1766. Examination by attorney-general. 1767. Use of corporate property. 1768. Legislature may restrict powers. 1769. Stockholders' liability. 1770. Corporation may maintain action against stockholders. 1770a. Capital stock of foreign manufacturing corporations. 1770b. Filing articles; attorney; process; forfeiture; contracts.
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**General powers.**

§ 1748. Every corporation organized under any general or special law, when no other provision is specially made by law, or by its articles of organization, shall have the following powers:

Powers are exercised by directors. § 1776. General powers. § 1775. Legislature may restrict. § 1768.

[Corporations organized under chapter 144, Laws 1872, are now governed by these statutes. *In re Klaus*, 67 Wis. 401; s. c., 29 N. W. Rep. 582.]

1. To make all contracts necessary and proper to effect its purposes and conduct its business.

Cannot engage in banking business. § 2021. May purchase stock in other corporations, when. § 1775.

[It is sufficient consideration for the assignment of a mining option to a corporation that stockholders become liable to pay assessments to develop the property and do pay money for that purpose. *Kountz v. Gates*, 78 Wis. 415; s. c., 47 N. W. Rep. 729.]

Contract by a promoter may be adopted by the corporation after its organization. *Pratt v. Match Co.*, 89 Wis. 406; s. c., 62 N. W. Rep. 84.

After articles of incorporation are filed for record, but before organization, the signers of the articles may contract for materials to carry on the business. *Badger Paper Co. v. Rose*, 70 N. W. Rep. 302.

The State alone can object that a corporation in buying certain claims acted ultra vires. *Farnell Co. v. Wolf*, 70 N. W. Rep. 289.]

2. To sue and be sued, to appear and defend in all actions and proceedings in its corporate name, to the same extent as a natural person.

Corporation may maintain action against stockholders. § 1770. Actions against corporations, place of trial. § 2619. Manner of commencing. § 2637. Injunctions not to be granted, when. § 2780. Receivers. §§ 2787, 2787a, 3246. Special proceedings against corporations. §§ 3204-3250. Actions in Justice's court. § 3801. Evidence. §§ 4181, 4181a, 4199. Limitation of actions.

## Corporate powers — R. S., § 1748.

§ 4252. Criminal proceedings against. §§ 4734, 4735. Foreign corporation may sue and be sued. §§ 3207, 3208. But must have attorney for process. § 1750a. Attachment. §§ 2731, 2736. Action against bank. § 3220. Action to vacate charter. §§ 3240-3250.

[A corporation may be sued for a trespass quare clausum fregit. Merriman v. Mach. Co., 86 Wis. 142; s. c., 56 N. W. Rep. 743. And for negligent injury to employee through negligence of fellow servant. Molakose v. Coal Co., 86 Wis. 220; s. c., 56 N. W. Rep. 475. For a death of an employee through negligence of a superintendent. Faerber v. Lumber Co., 86 Wis. 226; s. c., 56 N. W. Rep. 745. Or caused by defective appliances. Thompson v. Johnston Bros. Co., 86 Wis. 576; s. c., 57 N. W. Rep. 298. For breach of covenant of lease. Milling Co. v. Howitt, 86 Wis. 270; s. c., 56 N. W. Rep. 784. For breach of warranty of machinery. Larson v. Aultman & Taylor Co., 86 Wis. 281; s. c., 56 N. W. Rep. 915. For goods sold and delivered. Distilling Co. v. Importing Co., 86 Wis. 352; s. c., 56 N. W. Rep. 864. For services rendered. Cummings v. Realty Co., 86 Wis. 382; s. c., 57 N. W. Rep. 43; Print. Co. v. Pub. Co., 87 Wis. 127; s. c., 58 N. W. Rep. 238; Maher v. Lumber Co., 86 Wis. 530; s. c., 57 N. W. Rep. 357; Brunnell v. Saw-Mill Co., 86 Wis. 587; s. c., 57 N. W. Rep. 864. For ejectment. Weld v. Mfg. Co., 86 Wis. 549; s. c., 57 N. W. Rep. 378; Same v. Same, 86 Wis. 552; s. c., 57 N. W. Rep. 374. For salary of officer. Littlefield v. Bergenthal Co., 87 Wis. 394; s. c., 58 N. W. Rep. 743. To restrain and abate nuisances. Price v. Creamery Co., 86 Wis. 536.

A corporation held liable for negligence whose building foreman allowed excessive weight of snow to be left upon the roof. Johnson v. Bank, 79 Wis. 414; s. c., 48 N. W. Rep. 712.

In an action by a corporation against its president or treasurer for negligence or misconduct in office, held to be an equitable action. B. & L. Assn. v. Chllds, 82 Wis. 460; s. c., 52 N. W. Rep. 600.

Summons and complaint naming defendant as W. S. Railway Company, instead of W. S. Railroad Co., allowed to be amended, although W. S. Railway Company existed. Parks v. Ry. Co., 82 Wis. 219; s. c., 52 N. W. Rep. 92.

Dental by a corporation of an averment that it was incorporated in a certain manner is bad on demurrer. Brown v. Gas Co., 21 Wis. 51. An express company may deny averment of negligence by its servants. Boorman v. Am. Ex. Co., 21 Wis. 152. But a corporation cannot so deny facts necessarily within the knowledge of its officers. Mills v. Jefferson, 20 Wis. 50.

If the name of a corporation be changed, it must sue and be sued, in respect to its prior rights and liabilities, by its new name. Dousman v. Milwaukee, 1 Pin. 81.

Secretary of a defunct corporation may testify as to facts which worked its dissolution. Combes v. Keyes, 89 Wis. 297; s. c., 62 N. W. Rep. 89. But no costs can be awarded in favor of such a corporation. Id.

A defendant who pleads a counterclaim in an action by a corporation is estopped to deny plaintiff's corporate existence. Imp. Co. v. Holway, 85 Wis. 844; s. c., 55 N. W. Rep. 418.]

### 3. To have a common seal, and alter the same at pleasure.

Corporate deeds must be sealed. § 2216. How seal must be impressed upon instrument.

[The seal of a corporation is not essential to the validity of the power of attorney to confess judgment. Ford v. Hill, 66 N. W. Rep. 115.]

4. To elect or appoint in such a manner as shall be fixed by its by-laws, all necessary officers, agents and servants, define their du-

ties and obligations, fix their compensation and fill vacancies therein; and to establish branch offices or places of business in this State or elsewhere.

Foreign corporation to appoint attorney for process. § 1750a. Election of officers. § 1762. Record of, to be kept. § 1759. Corporation managed by directors. § 1776. Officers to execute conveyances. § 2218. Crimes by corporation officers; penalties. §§ 4435, 4436. Process to be served on officer or agent. § 2637. Jurisdiction of court over officers. § 3237.

[President of corporation, who had entire control of its business, accepted in name of the corporation a draft drawn on himself personally. No objection being made for six months, the corporation is estopped to recover the amount from the bank. McLaren v. Bank, 76 Wis. 259; s. c., 45 N. W. Rep. 223. A receiver has no more right to recover than corporation had. Id.

Agent of an insurance company may, at time of making contract, waive by parole any clause in the policy. Stanhilber v. Ins. Co., 76 Wis. 285; s. c., 45 N. W. Rep. 221.

Authority of agent of a corporation to make a contract may be shown by parole evidence. Sell v. Logging Co., 88 Wis. 581; s. c., 60 N. W. Rep. 1065. And that president acted as agent of the corporation in making a contract. Bank v. Lewis, 78 Wis. 475; s. c., 47 N. W. Rep. 834.

Until after a corporation has legal existence, no one, whether a promoter or not, can be its agent; and if one assumes to act as such agent, the corporation is not bound thereby unless, with full knowledge of facts, it ratifies such contract. Upon a contract so made but not so ratified, the stockholders cannot be held personally liable under above section. Buffington v. Bardon, 80 Wis. 635; s. c., 50 N. W. Rep. 776.

An attorney of a corporation may be appointed for a longer term than one year. Germania Spar & Bau Verein v. Flynn, 66 N. W. Rep. 109.

An officer of a corporation that was new, in a condition to pay its debts in full, cannot prefer himself as a creditor as against the general creditors, by giving a mortgage to his wife on the property of the corporation. Rowe v. Leuthold, 77 N. W. Rep. 153.

One who is acting as officer of a corporation, and who is recognized by the corporation itself, and is in possession of the office, must be recognized as such officer by outsiders in all merely collateral proceedings. His right can only be attacked in a direct action brought for that purpose by a stockholder or by one authorized by law to sue. Barthell v. Hencke, 99 Wis. 660; s. c., 75 N. W. Rep. 952.

### Liability on indorsement by officers.

A vice-president of a corporation, being intrusted with a note, with blanks to be filled up, and the name of the corporation on the back, has implied authority to fill up the blanks, and to bind the corporation as an indorser by delivering the note after a signature by a maker. Johnson v. Weed & Gumaer Mfg. Co., 79 N. W. Rep. 236.

5. To make, amend and repeal by-laws and regulations not inconsistent with law, or its articles of organization for its own government, for the orderly conducting of its affairs, and the management of its property, for determining the manner of calling and conducting its meetings, the manner of appointing and mode of voting by proxy, and the tenure of office of its several officers, and such others as shall be necessary or convenient for the accomplishment of its pur-

## Corporate powers; quorum; principal office — R. S., §§ 1749, 1750.

poses, and may prescribe suitable penalties for the violation of its by-laws, not exceeding in any one case twenty dollars for any one offense.

By-laws shall provide for number of officers and directors and manner of election. §§ 1748 (4), 1776.

6. To take and hold property, both real and personal, to an amount authorized by law and sell, convey, or otherwise dispose of the same.

Restrictions upon use of property. § 1767. Corporate rights may be purchased. § 1788. Limitation on holding of real estate. § 2200a. Execution of conveyances. § 2216. See Const., art. I, § 13.

[A de facto corporation may hold and convey real estate. Ricketson v. Galligan, 89 Wis. 394, s. c., 62 N. W. Rep. 87.

Persons conspiring with promoters of a corporation to misrepresent the amount of property transferred to the corporation are equally liable with the promoters. Park Co. v. Roberts, 66 N. W. Rep. 399.]

7. To mortgage its franchises, tolls, revenues and property, both real and personal, to secure the payment of its debts, or to borrow money for the purposes of the corporation, and no other, with the consent of a majority of its stockholders, or if not a stock corporation, of a majority of its members, and to establish, with the like consent, a sinking fund for the payment of its debts. (1853, ch. 86, § 1; R. S. 1858, ch. 78, §§ 1, 2, 7; 1875, ch. 325, § 1.)

See subdivisions 1 and 6, supra. Not to engage in banking. § 2021.

**Ultra Vires.**

[The doctrine of ultra vires is to be used only by the State to punish a corporation, and not by the corporation to perpetrate a wrong. Zinc Carbonate Co. v. First Nat. Bank, 79 N. W. Rep. 229. Where a corporation obtains a wrongful advantage in a transaction outside of its corporate powers, it cannot plead ultra vires. Id.]

**Quorum of directors; of stockholders.**

§ 1749. A majority of the directors or trustees of every corporation, convened according to the by-laws thereof, shall constitute a quorum for the transaction of business. The members owning a majority of the stock in stock corporations, and a majority of the members of other corporations, shall constitute a quorum at any meeting of such stockholders or members, and be capable of transacting any business thereof, except when otherwise specially provided by law or by the articles of organization of the corporation. (1872, ch. 144, § 10.)

Stock corporations to be managed by directors. § 1776. Meeting of stockholders, how called. § 1773.

[See Wells v. Canal Co., 64 N. W. Rep. 69.]

**Principal office to be in State; books to be produced; statement of assets to be produced.**

§ 1750. Every corporation organized under the laws of this State, except such railroad corporations as own or operate railroads in another State as well as in this State in connection with their railroads in this State, shall have its principal office in this State, and shall keep in such office its general and principal books of account, including its stock books; and its principal managing officer or superintendent shall reside within this State. Any corporation which, according to the foregoing provision, is not required to keep its principal office or books of account within this State, shall, whenever required to do so by the railroad commissioner, the legislature or any committee thereof, or of either house thereof, or any court of record, produce before such commissioner, legislature, committee or court, its said books of account and stock books, or so many and such parts thereof as may be necessary, and as may be required by such commissioner, legislature, committee or court, or in the discretion of such commissioner, legislature, committee or court, transcripts from such books or such parts thereof as may be required and called for, duly proved and authenticated, may be produced and used as and for the original; and each such corporation shall designate some office within this State as its principal office and inform the railroad commissioner of such selection and designation, and such corporation shall keep in such office a list of its stockholders, together with a statement of the number of shares of its stock held by each of them respectively, as shown by its books, which list shall be corrected as often as three times in each year, at the times of closing its stock books if it shall so often close them, and if it shall not so often close them, then such list shall be corrected once at least in each four months. A failure or refusal to comply with any of the foregoing provisions of this section shall be cause of forfeiture of its franchises. At least once in each year, each stock corporation shall make and file in its principal office, and keep on file there for the use of its stockholders, a statement and abstract of the assets and liabilities of such corporation, and of its financial transactions for the previous year, which statement shall be verified by the affidavit of the treasurer, or other proper officer of such corporation and shall contain a brief statement of the sources whence its receipts have been received, stated in classes, and a similar statement of its expenditures showing the amount disbursed for each class of objects and purposes.

See § 1772. Service of summons on corporation. § 2637.

[Independently of statute, it is the duty of a private corporation to keep its principal place of

## Capital stock; transfer — R. S., §§ 1751, 1752.

business, its records and residence of its officers, so located as to render it accessible to process and to exercise of visitorial power of State by which it is created; and a forfeiture may be decreed for violation of this common-law principle. *State v. Ry. Co.*, 45 Wis. 580.

The statute requires that the principal managing agent shall actually reside within the State. A mere constructive residence will not satisfy it. In the absence of such actual residence, service of process made upon the person in the State who seems to have general supervision of the affairs of the corporation therein will be sustained though he is not, strictly, the managing officer. *Wickham v. So. Shore L. Co.*, 89 Wis. 23; s. c., 61 N. W. Rep. 287.]

**Capital stock, nature and transfer of.**

**§ 1751.** The capital stock of every corporation, divided into shares, shall be deemed personal property and when certificates thereof are issued such shares may be transferred by indorsement of the owner, his attorney or legal representative and delivery of the certificate. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee for a value, together with a written transfer of the same, signed by the owner of the certificate, his attorney or legal representatives, shall be sufficient delivery to transfer the title as against all persons, but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred; and every person transferring any such certificates or shares shall remain liable to the creditors of the corporation to the extent and in the manner prescribed in section 1756. (R. S., § 1751, as amended 1891, ch. 414.)

Transfer on books, how compelled. § 1752. Stock issued for value only. § 1753. Calls. § 1754. Stockholder's liability. §§ 1755, 1756, 1769. Number of shares to be stated in articles. § 1772. Attachment of shares. § 2738. Sequestration of stock. § 3216. Fraudulent issue of stock; penalty. § 4436.

[No assignment of shares by indorsement and delivery of certificates (whether indorsement is in full or otherwise), is valid, except as between the parties, until it is entered on the books as required by above statutes; an attachment or execution creditor takes as against such transferee. *In re Murphy*, 51 Wis. 519; s. c., 8 N. W. Rep. 419.

In an action to set aside the assignment of stock, an averment that such assignment was made must be construed that it was made under above section so as to divest judgment debtor of all right to the stock, unless it was void for fraud or want of consideration. *Arzbacher v. Mayer*, 53 Wis. 380; s. c., 10 N. W. Rep. 440.

The liability created by section 1796 is additional to that under above section. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

Persons who deal in stock certificates do so with notice of the provision of above section and of section 1756. One who holds such certificate can only pledge his residuary interest in them. *Williamson v. State*, 74 Wis. 263; s. c., 42 N. W. Rep. 11.

Where defendants, by conspiracy and fraud, induced several persons to buy worthless shares of

stock, it is not maintenance for such persons to contribute to a fund to prosecute an action by one of them as a test case to determine liability of defendants. *Davies v. Stowell*, 78 Wis. 334; s. c., 47 N. W. Rep. 370.

Representation that a mining company had \$1,500,000 worth of ore on the surface of the road for crushing is held not so extravagant as to justify court in holding, as a matter of law, that the purchaser of the stock of the company could not have relied upon it as being true. *Barndt v. Frederick*, 78 Wis. 1; s. c., 47 N. W. Rep. 6.

A purchaser becomes responsible for whatever remains unpaid upon the shares purchased, although directors had ordered certificates called in and canceled. *Herdegen v. Cotzhausen*, 70 Wis. 589; s. c., 36 N. W. Rep. 385.

A valid equitable pledge of corporate stock may be made by delivery of the certificates indorsed in blank by the owner as security for a debt, without entry of a transfer of the legal title upon books as provided in above section. *Plankinton v. Hildebrand*, 89 Wis. 209; s. c., 61 N. W. Rep. 839.

Sale of controlling interest in a corporation; contract construed. *Ry. Co. v. Hoyt*, 89 Wis. 314.

Contract for the sale of stock in a corporation, together with the seller's interest in its stock on hand, construed. *Novelty, etc. Co. v. Stone*, 66 N. W. Rep. 600.

One who is merely the holder of a corporation's capital stock in trust for creditors is not liable for the directors' mismanagement. *South Bend, etc. Co. v. Cribb Co.*, 72 N. W. Rep. 749.

One holding stock as collateral held not liable to corporate creditors whose claims accrued before he became a stockholder. *Gilman v. Gross*, 72 N. W. Rep. 885.

A corporation not prohibited by its charter may purchase its own capital stock, yet such power cannot be exercised by an officer of the corporation without special authorization in that regard by its board of directors. If a secretary and business manager of a corporation, having no authority other than that ordinarily incident to such a position, sell and deliver to another property of the corporation, agreeing to accept in its behalf some of its capital stock in payment thereof, and such officer disposes himself from returning such property by transferring title thereof to a third party, the corporation may, at its election, hold such officer liable on an implied promise to pay for such property at the sale price. *Calteaux v. Mueller*, 78 N. W. 1082.]

**Transfer on books, how compelled.**

**§ 1752.** Whenever it shall be made to appear to the circuit court, by affidavit or otherwise, that the secretary or other proper officer of any corporation has, upon proper demand, neglected or refused for two days to transfer on the stock book of the said corporation any stock which it is his duty to transfer such court shall immediately issue an order requiring said secretary to show cause before said court, at some time named in said order not more than ten days from the date thereof, why he should not transfer such stock, and shall in said order direct the manner of its service; and when said order is returnable, unless said secretary shows cause to the satisfaction of the court why such stock should not be transferred, said court shall order such transfer to be made by said secretary at such time and place as to said court shall seem reasonable, and may enforce the performance thereof by proceedings for contempt. (1862, ch. 99, § 1.)

See § 1751, cross-references.

## Issue of stock — R. S., § 1753.

[Fact that certificates of stock purporting to be fully paid were inadvertently issued when subscribers had paid but two-thirds of their subscriptions, and that the secretary has been ordered by directors to call in and cancel such certificates, does not justify him in refusing to transfer on books stock purchased from one of such subscribers. Nor is it material whether sale of the stock was bona fide or not. Herdegen v. Coltzhausen, 70 Wis. 589; s. c., 36 N. W. Rep. 385.

Duties of secretary as to transfer of stock are purely ministerial, and he cannot inquire into the motives of the parties to the transfer. In re Klaus, 67 Wis. 401; s. c., 29 N. W. Rep. 582.

A by-law requiring consent of all stockholders to the transfer of the stock of a member is void as against public policy; and no exception can be made in the application of this rule on the ground that stockholders were originally copartners, and the one attempting to transfer his stock consented to and voted for such by-law. *Id.*

Laches in bringing action to compel transfer of corporate stock, what is. *Rodgers v. Van Northwick*, 37 Wis. 414; s. c., 58 N. W. Rep. 757.

Incorporator not guilty of laches in demanding delivery of certificate, when. *Wells v. Canal Co.*, 90 Wis. 442; s. c., 64 N. W. Rep. 69. In an action to compel a corporation to deliver stock, the directors are proper parties. *Id.*

## Consideration for which stock may issue.

§ 1753. No corporation shall issue any stock or certificate of stock except in consideration of money or labor or property estimated at its true money value, actually received by it, equal to the par value thereof, nor any bonds or other evidence of indebtedness, except for money, labor or property estimated at its true money value, actually received by it, equal to seventy-five per cent. of the par value thereof, and all stocks and bonds issued contrary to the provisions of this section, and all fictitious increase of the capital stock of any corporation shall be void; provided, that any corporation whose stock or bonds have been or shall be admitted to the stock exchange of Chicago, New York, Boston or Philadelphia, or of either of them, may sell such stock or bonds so admitted at the best price or prices current for the time being obtainable therefor on any of the said exchanges at which the same shall be offered for sale; and provided further, that nothing in this section contained shall apply to any issues of stock or of bonds heretofore or hereafter made by any railroad corporation in accordance with any plan of reorganization adopted by the holders of the greater amount of the bonds or of the stock of any insolvent railroad corporation whose railroad wholly or partly within this State has been sold or hereafter shall be sold at mortgage sale, or in bankruptcy or at other judicial sale, and acquired by the railroad corporation making such new issues of stocks or of bonds or both; and any and all such issues heretofore made in conformity with any such plans of reorganization, are hereby legalized, ratified and confirmed. (Thus amended by L. 1899, ch. 193; approved April 18, 1899).

See § 1761, cross-references.

## Action by stockholder.

[A subscriber who agrees that stock shall be issued to him at less than its par value, though his act is not expressly prohibited, is in pari delicto, and he cannot maintain the contract or recover back money paid on it. *Clarke v. Lumber Co.*, 59 Wis. 655; s. c., 18 N. W. Rep. 492. See, also, *Mining Co. v. Spooner*, 74 Wis. 307; s. c., 42 N. W. Rep. 259.

## Jurisdiction of court of equity.

A court of equity has jurisdiction of an action brought by a stockholder against a corporation to procure the cancellation of stocks alleged to have been issued without lawful authority, and incidentally to restrain holders of such stock from voting thereon. *Wood v. Building Assn.*, 63 Wis. 9; s. c., 22 N. W. Rep. 756.

## Pleadings.

Where complaint, though in form in behalf of plaintiff alone, shows that other stockholders will be injured in same manner by the unlawful issue, that it was issued contrary to their wishes, and demands relief which would necessarily injure to benefit of all stockholders, the action is in behalf of all, and any stockholder may become a party plaintiff. *Id.* The directors are not necessary parties. *Id.*

## Inventions.

Inventions for which patents have been applied for, and the prospective patents, are "property," within meaning of this section, in consideration of which stock may be issued. *Whitehill v. Jacobs*, 75 Wis. 474; s. c., 44 N. W. Rep. 630.

## Fraudulent transactions.

Where fully-paid stock is issued for property received by corporation, the holders thereof cannot be charged with a debt of the corporation on ground that such stock was not in fact fully paid, unless there was actual fraud in the transaction and the credit was given to the corporation in the belief that its stock was fully paid. *Id.*

Fraudulent representations as to value and validity of stocks issued in consideration of labor and property; effect of. *Warner v. Bates*, 75 Wis. 278; s. c., 43 N. W. Rep. 957.

A court of equity may, in a suit by a stockholder, adjudge that stock issued by a corporation is void on ground of fraud. *Bailey v. M. & P. Co.*, 77 Wis. 453; s. c., 40 N. W. Rep. 539.

## Issue of bonds.

Where bonds of a corporation, pledged as security for its debt, were void under above section, because issued without its receiving 75 per cent. of their value, no action for surrender or cancellation thereof can be maintained by the corporation, or by a stockholder in its right, without a tender of the amount due to the pledgee. *Hinckley v. Pfister*, 83 Wis. 64; s. c., 53 N. W. Rep. 21.

Where all the stock of a corporation is void under this section because not fully paid for, none of the stockholders can make any claim by himself or through it to the aid or protection of a court of equity as against the others, based upon the rights of the stockholders. *Id.*

Where a corporation hypothecates its bonds as security for loan, it issues them within meaning of above section, and if it is not stipulated that they shall be accounted for at less than 75 per cent. of their par value, the bonds show issue to be void. *Pfister v. Elec. R. Co.*, 83 Wis. 86; s. c., 53 N. W. Rep. 27.

## In general.

As between corporation and its stockholders, it cannot be claimed that the property conveyed was an insufficient consideration for the stock. *Wells v. Canal Co.*, 64 N. W. Rep. 69.

False representations to induce subscription to stock; subject discussed. *Warner v. Benjamin*, 89 Wis. 290; s. c., 62 N. W. Rep. 179.

## Subscriptions; stockholders' liability — R. S., §§ 1754-1756.

A contract of subscription held to be several with each subscriber, and not joint. *B. & M. Co. v. Cupp*, 89 Wis. 673; s. c., 62 N. W. Rep. 520.

A subscription to stock is not binding until delivered to and accepted by the corporation. *Gilmann v. Gross*, 72 N. W. Rep. 885.

That promoter paid commission to induce another to subscribe held not a fraud on the corporation or other subscribers. *Cold Storage Co. v. Dexter*, 74 N. W. Rep. 976.]

## Subscriptions, how called in.

§ 1754. Unless otherwise expressly provided by law, or the articles of organization, the directors of any corporation may call in the subscriptions to the capital stock by installments, in such proportion and at such times as they shall think proper, by giving such notice thereof as the by-laws shall prescribe and may enforce payment thereof, by suit in the name of the corporation; or in case any stockholder shall neglect or refuse payment of any such installment, for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, the stock of such negligent stockholder may be sold by the directors at public auction, giving at least thirty days' notice in some newspaper published at or nearest to the place where the business of such corporation is transacted; and the proceeds of such sale shall be first applied in payment of the installment called for and the expenses attending the sale, and the residue be refunded to the owner thereof; but if the proceeds of such sale shall not be sufficient to pay such installment and the expenses of the sale such delinquent stockholder shall remain liable to the corporation for such deficiency; such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so bought.

See § 1751, cross-references.

[Where an insolvent corporation ceases to do business and assigns all its property, including unpaid subscriptions to stock, to trustees for benefit of creditors, the liability of its stockholders at once becomes absolute, and Statute of Limitations begins to run in their favor, and against such creditors and trustees. *Glenn v. Dorzheimer*, 23 Fed. Rep. 695. But see *Glenn v. Howard*, 8 S. E. Rep. 636.

An assessment held to be unequal and, therefore, void, though made by a court of another State in an action therein. *Tel. Co. v. Burnham*, 79 Wis. 47; s. c., 47 N. W. Rep. 373; *Bowen v. Kuehn*, 79 Wis. 53; s. c., 47 N. W. Rep. 374.

In an action upon a subscription to stock, evidence held not to sustain defendant's claim and that he had induced another person to take a part of the stock, and that the corporation had thereby released him from further liability. *McLaren v. Terry*, 81 Wis. 118; s. c., 51 N. W. Rep. 87.

Under the statute, notice of a call on stockholders for an installment on stock must be prescribed by a by-law, or equivalent resolution, uniform as to all stockholders. *Germania Iron M. Co. v. King*, 94 Wis. 439; 69 N. W. Rep. 181.

This section provides a definite rule and avoids the conflict and uncertainty of previous decisions. The call is made effective by giving such notice as the by-laws prescribe. If a complaint does not allege that the call was so made it does not state a cause of action. *Id.*

A resolution of a corporation, requiring subscribers to its stock to pay a stated sum on their

shares within a certain time, either in cash or by a promise to pay in the form of a land contract, whereupon stock is to become fully paid, is too indefinite to support an action against a stock subscriber for the non-payment of the sum called for, because it fixes no terms by which either the directors or stockholders are to be governed in settlement of the balance due the corporation, and fails to state at whose option payment may be in cash or by land contract. Under the above section notice of a call by mailing a copy thereof to the subscriber is insufficient in the absence of a by-law authorizing the giving of notice in such manner, though the directors by resolution directed the notice to be given in that way. *North Milwaukee Town Site Co. v. Bishop*, 79 N. W. Rep. 785.

Right of corporation to recover on a subscription for stock after a sale by it of its entire stock. *Level Land Co., etc. v. Hayward*, 95 Wis. 109; 69 N. W. Rep. 567.

A subscriber to stock is not a stockholder until the subscription is accepted by the corporation. *Badger Paper Co. v. Rose*, 95 Wis. 145; 70 N. W. Rep. 302.]

## Stockholders' liability on reduction of stock; contribution.

§ 1755. Whenever the capital stock of any corporation shall be diminished by any corporate vote, the stockholders thereof shall be liable for the payment of all debts then remaining unpaid, in an action by any such creditor or lawfully appointed receiver or assignee of such corporation, to an amount equal to the sum respectively refunded to them or credited upon their debts for unpaid stock, or both. And also the stockholders voting for such diminution shall be jointly and severally liable to any creditor whose debt shall then remain unpaid to an amount equal to the whole amount refunded to the stockholders or credited upon their debts for unpaid stock, or both; but all stockholders shall be liable for contribution to every stockholder compelled to discharge corporate debts under this section proportionately to the amount so refunded or credited to them respectively. (1853, ch. 68, § 21; 1872, ch. 144, § 19.)

See next section, and § 1751, cross-references. Stockholder's liability. § 1769. How enforced. § 3226. Statute of Limitations. § 4252.

[The liability imposed by section 1769 is additional to that created by above section and by section 1751. *Sleeper v. Goodwin*, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

Purchaser of stock not fully paid up becomes liable for unpaid balance due thereon. Such stock may be sold and assigned like any chose in action. *Herdegen v. Cotzhausen*, 70 Wis. 589; s. c., 36 N. W. Rep. 385.]

## Stockholder, release from liability.

§ 1756. If any stock shall be transferred, which is not fully paid, the corporation may, by agreement to be noted on its stock book, discharge the stockholder making such transfer, from liability to it for the unpaid part of his stock subscription, and accept that of the person to whom the stock is transferred in his place; but the person transferring such stock shall be liable for the

## Inspection of books; preferred stock; meetings — R. S., §§ 1757-1760.

amount unpaid thereon to the then creditors of such corporation and those who may become such within six months after such transfer, or to any lawfully appointed receiver or assignee of the corporation for their use. (1872, ch. 144, § 14.)

See § 1755 and § 1751, cross-references.

**Stockholder may inspect books; creditor entitled to information.**

§ 1757. The books of every corporation containing the stock subscriptions and accounts shall at all reasonable times be open to the inspection of the stockholders; and every creditor of a corporation shall be informed at any time of the amount of capital stock of such corporation subscribed, the amount paid in, who the stockholders are, the number of shares of stock owned by each, and the amount unpaid by each stockholder upon the shares owned by him, and if any shares of stock, which were not fully paid for, have been transferred within six months of the time of inquiry, the name of the person who transferred the same and the amount due thereon at the date of such transfer. And the officers of such corporation shall furnish any such creditor correct information thereof. And any officer refusing, when requested so to do, shall be liable for any damage caused thereby (1853, ch. 58, § 14; 1872, ch. 144, §§ 15, 17.)

See § 1751, cross-references.

[The "accounts" which are required by above section to be open to inspection of stockholders include not only stock accounts, but also the general accounts of the corporation. State v. Bergenthal, 72 Wis. 314; s. c., 39 N. W. Rep. 566. Writ of mandamus to permit stockholder to examine books is properly directed to person having possession and control of them. *Id.* Whether corporation itself should be made a party to the proceeding is not a question to be considered on a motion to quash the writ, but facts in that behalf should be made to appear by the return. *Id.*]

**Stockholder entitled to credit in actions against them.**

§ 1758. In actions by or for the benefit of any such creditor against stockholders to recover what may be due and unpaid on any stock such stockholders shall only be credited with such sums as have been actually paid in in money, or its equivalent in value on account of such stock, and not with any dividend which may have been declared and applied on such stock. (1872, ch. 144, § 18.)

Corporation may be joined as defendant. § 3223. Payments, when stockholders to make. § 3226. Suits restrained. § 3227.

**General and stock record; forfeiture.**

§ 1759. Every corporation shall keep a correct and complete record of all its proceedings, including such as relate to the election of its officers; and such record may be kept in any other than the English language when so provided in its articles of organiza-

tion. Every corporation shall also keep a book containing the names of all stockholders or members since its organization, showing the place of residence, amount of stock held, time of acquiring stock or becoming a member, time of transfer of stock or cessation of membership of each respectively. If any officer, agent or servant of any corporation shall omit to make any entry in the books or records thereof which it is his duty to make as such officer, agent or servant, he shall forfeit not less than twenty-five nor more than one thousand dollars and be liable for all damages thereby sustained. (1872, ch. 146, § 10; 1874, ch. 133, § 10.)

Stockholder may inspect books. § 1757. Election of officers. § 1762. Books to be produced. § 1750. Records of stockholders. § 1751. Examination by attorney-general. § 1766.

**Preferred stock; interest.**

§ 1759a. Corporations now existing or hereafter organized may issue preferred stock either at the time the common stock is issued in the first instance or at any time afterwards if all of the shareholders consent thereto. Such preferred stock may be so issued as to secure to the holder thereof the payment of dividends out of profits at a specified rate before dividends shall be paid upon the common stock, and for the payment of such dividends accumulated or in arrears thereon; but such preferred stock shall give no preference over common stock in the distribution of corporate assets other than profits, and dividends thereon shall in no case be paid out of the corporate assets not accruing from profits, nor shall the same, nor the common stock, be made to bear interest. (New.)

**Meetings of Stockholders.**

**Vote; proxies; shares in trust.**

§ 1760. Every stockholder of any corporation shall be entitled to one vote for each share of stock held and owned by him at every meeting of the stockholders and at every election of the officers thereof, and may vote either in person or by proxy at such elections, and by proxy at other meetings when so provided by the by-laws of the corporation; and every executor, administrator, guardian, assignee for creditors, receiver, or trustee shall represent the shares of stock in his hands at all meetings of the stockholders, and may vote thereat as a stockholder. (R. S. 1858, ch. 76, § 14; 1866, ch. 88, § 1; 1872, ch. 144, § 10.)

Meeting, how called. § 1773. Quorum, what is. § 1749. Meetings not regularly called. § 1761. Election of officers, how called. § 1762.

**Irregular meeting.**

§ 1761. When all the members of any corporation shall be present at any meeting,

## Election of officers; dissolution — R. S., §§ 1762–1764.

however notified, and shall sign a written consent to the holding of such meeting on the records thereof, they may transact any business at such meeting which could lawfully be transacted at any meeting of the members of such corporation regularly called and notified. (R. S. 1858, ch. 78, §§ 5, 6.)

See § 1760, cross-references.

## Election of officers.

§ 1762. When not otherwise specially provided by law or by the by-laws of any corporation, the directors or trustees thereof shall call and order the elections of the officers of such corporation annually; and if they refuse so to do or if from any other cause it shall happen that an election of directors or trustees shall not take place at the annual meeting such corporation shall not be deemed dissolved thereby, but the former officers shall continue to act as such until their successors shall have been elected and qualified, and a special election may be called by the proper officers of such corporation for electing such officers by giving such notice as is required for the annual election; but if such officers shall refuse or neglect to call such special election for ten days after the time fixed for the annual election or if there be no officer authorized to call such special election then any two or more members of such corporation may call a special meeting for the election of officers in the manner prescribed in section one thousand seven hundred and seventy-three. When the day fixed for the annual election of officers or other meeting of a corporation shall fall on Sunday or on a legal holiday such election or meeting shall be held on the next succeeding secular day. (R. S. 1858, ch. 78, § 4; 1866, ch. 88, § 2; 1872, ch. 144, § 9; 1872, ch. 146, § 11; 1874, ch. 113, § 11.)

See § 1748 (4), cross-references.

## Dissolution.

## Insolvency; suspension for a year.

§ 1763. Whenever any corporation shall have remained insolvent, or shall have neglected or refused to pay and discharge its notes or other evidences of debt, or shall have suspended its ordinary and lawful business for one whole year, it shall be deemed to have surrendered the rights, privileges and franchises granted or acquired under any law, and shall be adjudged to be dissolved. (R. S. 1858, ch. 148, § 20.)

Corporation may dissolve, how. § 1789. Receiver may be appointed. § 2787. Insolvent corporation may be enjoined. § 3218. Action to vacate charter. §§ 3240–3250.

[The origin, purposes and scope of above section discussed. Sleeper v. Goodwin, 67 Wis. 577; s. c.,

31 N. W. Rep. 335; Strong v. McCagg, 55 Wis. 624; s. c., 13 N. W. Rep. 895.

Surrender of franchises, what held to be. Combès v. Keyes, 89 Wis. 297; s. c., 62 N. W. Rep. 89.

Secretary of a defunct corporation may testify as to facts which worked its dissolution. *Id.*

No costs can be awarded in favor of a defunct corporation. *Id.*

The insolvency of a corporation does not convert its property into a trust fund. Ford v. Hill, 66 N. W. Rep. 115.

The suspension by a corporation of its ordinary business for the year does not ipso facto dissolve the corporation under above section. Mylrea v. Superior, etc., Ry. Co., 67 N. W. Rep. 1138.

A corporation is not dissolved by a mere non-user of its franchises. *Id.*

Judgment may be entered nunc pro tunc on dissolution. Shakman v. United States, etc., Co., 92 Wis. 366; s. c., 66 N. W. Rep. 528.

Insolvency does not convert property into a trust fund or prevent a preference by entry of judgment on a note. Ford v. Hill, 92 Wis. 88; s. c., 66 N. W. Rep. 115.

A franchise is extinguished by the operation of some self-executing forfeiture clause of the grant, by surrender and acceptance thereof by the State, by decree, and by abandonment and non-user for so long a period that surrender and acceptance will be presumed. Wright v. Railroad Co., 93 Wis. 29; s. c., 69 N. W. Rep. 791. Suspension of corporate business merely furnishes ground for the dissolution of a corporation by judicial proceeding. Atty.-Gen. v. Superior, etc., R. Co., 93 Wis. 604; s. c., 67 N. W. Rep. 1138.]

## Continuance after dissolution.

§ 1764. All corporations whose term of existence shall expire by their own limitation, or which shall be voluntarily dissolved in the manner provided by law or by its articles of association, or shall be annulled by forfeiture or otherwise shall nevertheless continue to be bodies corporate for three years thereafter for the purpose of prosecuting and defending actions and of enabling them to settle and close up their business, dispose of and convey their property and divide their capital stock, and for no other purpose; and when any corporation shall become so dissolved the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they may be known, shall, subject to the power of any court of competent jurisdiction to make, in any case, a different provision, continue to act as such during said term and shall be deemed the legal administrators of such corporation, with full power to settle its affairs, sell or dispose of and convey all its property, both real and personal, collect the outstanding debts, and after paying the debts due and owing by such corporation at the time of its dissolution and the costs of such administration, divide the residue of the money and other property among the stockholders or members thereof. (R. S. 1858, ch. 78, §§ 8–10; 1872, ch. 146, § 6; 1874, ch. 113, § 8.)

[Above section does not limit the time within which an action must be brought to enforce liability imposed upon stockholders by section 1769. Sleeper v. Goodwin, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

It prolongs existence of a corporation for three years for what purpose? Powers v. Paper Co., 60 Wis. 23; s. c., 18 N. W. Rep. 20.]

## Dividends; examinations; liability for wages — R. S., §§ 1765–1769.

**When dividends not to be paid; liability.**

§ 1765. No dividends shall be paid to any stockholder of any corporation until the capital stock has been fully paid in, and no dividend shall thereafter be declared or paid by the directors of any corporation, except out of net profits properly applicable thereto and which shall not in any way impair or diminish the capital; and if any such shall be paid every stockholder receiving the same shall be liable to restore the full amount thereof, unless the capital be subsequently made good; and if the directors of any corporation shall pay any such dividend before the capital stock is fully paid in, when the corporation is insolvent, or in danger of insolvency, not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividend to the amount of their claims; provided, that any corporation which has invested or hereafter may invest its net earnings or income, or any part thereof, in permanent additions to its property, or whose property shall have increased in value, may lawfully declare a dividend payable to stockholders upon its capital, either in money or in stock to the extent of the net earnings or income so invested, or of the said increase in the value of its property; but the total amount of such dividend shall not exceed the actual cash value of the assets owned by the corporation in excess of its total liabilities, including its capital stock. (1853, ch. 68, §§ 22–24; 1872, ch. 144, § 20; 1893, ch. 59.)

**Examination by attorney-general.**

§ 1766. The attorney-general, whenever required by the governor, shall examine into the affairs and condition of any corporation in this State, and report such examination in writing, together with a detailed statement of the facts, to the governor, who shall lay the same before the legislature, and for that purpose the said attorney-general shall have power to administer all necessary oaths and to examine any person in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition; and the legislature, or either branch thereof, shall have full power to examine into the affairs and condition of any corporation in this State at all times and for that purpose, any committee appointed by the legislature, or either branch thereof, may examine any person in relation to the affairs and condition of such corporation, and its vaults, safes, books, papers and documents, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any court of record, or any judge thereof, under such rules and

regulations as the said court may prescribe. (R. S. 1858, ch. 78, § 22.)

**Action to annul charter. §§ 3240–3250.**

[Application by attorney-general for leave to bring proceedings to forfeit the franchise of the corporation denied on the ground that the right to bring such proceedings had been waived. State v. Water Power Co., 66 N. W. Rep. 512.]

**Use of property.**

§ 1767. The property of any corporation organized under any special or general law, shall be used only for the purposes prescribed by such law or by its articles of organization in pursuance thereof. (1872, ch. 144, § 4; ch. 146, § 13.)

**General powers. § 1748.****Legislature may restrict powers.**

§ 1768. The legislature may at any time limit or restrict the powers of any corporation organized under any law, and for just cause annul the same and prescribe such mode as may be necessary for the settlement of its affairs. (1872, ch. 144, § 26; 1853, ch. 68, § 26.)

All charters may be altered or repealed. Const., art. XI, § 1. Proceedings to annul charter. §§ 3240–3250.

**Stockholders' liability for wages.**

§ 1769. The stockholders of every corporation, other than railroad corporations, shall be personally liable to an amount equal to the stock owned by them respectively in such corporation, for all debts which may be due and owing to its clerks, servants and laborers for services performed for such corporation, but not exceeding six months' service in any one case. \* \* \* (1851, ch. 92, § 11; 1853, ch. 68, § 25; 1878, ch. 316.)

**Stockholder's liability.** § 1755. How released. § 1756. How enforced. § 3226. Limitation of action upon. § 1769.

[The mere dissolution of a corporation by its own voluntary act or by its ceasing to act as a corporation does not relieve stockholders from liability under above section. Sleeper v. Goodwin, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

A judgment against a corporation is not a condition precedent to the action under this section. Id. Liability created is in addition to liability of stockholders under sections 1751, 1756. Id.

In an action under section 1769 against stockholders of a corporation which has assigned all its property for benefit of its creditors, it may be shown that the corporation has no property or effects in hands of assignee, and, that fact appearing, court may proceed to ascertain the respective liability of stockholders to enforce same without appointing a receiver or other proceedings to ascertain whether any dividends to creditors would be made by the assignee. Id.

A partial payment of amount due to a servant for wages, if no particular application thereof is made by either party, will be held to apply in payment of wages first earned. Id.

Superintendents and foremen of manufacturing corporations, though they do not perform manual labor, are servants within meaning of this section. Id.

## Action against stockholders; foreign corporation — R. S., §§ 1770, 1770a.

If stock is held by person in his own name, and it so appears on books, he is liable under above section, even though he holds it as collateral security. *Id.*

Limitation of actions under above section. *Id.*

Legislature may fix liabilities of all stockholders of an existing corporation as to all debts contracted after enactment of the law fixing such liability. *Id.*

It is not stockholders at time a debt accrued, but those at time action is commenced thereon, who are individually responsible. *Cleveland v. Burnham*, 55 Wis. 598; *s. c.*, 13 N. W. Rep. 677, 680.

Liability under this section is not that of a partner, nor surety or guarantor, but one arising from the analogies of the law of corporations. *Id.* But see *Coleman v. White*, 14 Wis. 700.

As to the form of action, see *Adler v. Brick Co.*, 13 Wis. 57; *Pierce v. Const. Co.*, 38 id. 253; *Balston v. Bank*, 18 id. 490; *Powers v. Paper Co.*, 60 id. 23; *s. c.*, 18 N. W. Rep. 20.

Right of an employee to enforce his claim for services against stockholders personally, under above section, survives to his personal representative, and is, therefore, assignable. *Day v. Vinson*, 78 Wis. 198; *s. c.*, 47 N. W. Rep. 269.

Subscribers to capital stock to whom their stock has been issued upon payment of less than the par value thereof, may be compelled to make further payment thereon up to such par value, for benefit of corporate creditors. *Invest. Co. v. Mining Co.*, 78 Wis. 427; *s. c.*, 47 N. W. Rep. 726.

In an action under above section, against stockholders personally for debts due for services performed for the corporation, brought by some of the servants of corporation, or their assignees, in behalf of all creditors of the corporation having similar claims, defendants are not prejudiced by an order adding as plaintiffs further servants, or their assignees, for similar claims. *Day v. Buckingham*, 87 Wis. 215; *s. c.*, 58 N. W. Rep. 254.

A judgment creditor of a corporation (whether or not he has docketed his judgment, and issued execution against the real estate of the corporation) may maintain an action in behalf of himself and all other creditors who choose to be parties thereto, against the corporation jointly with the stockholders to reach and appropriate its assets, and enforce the liability of stockholders. *Bank v. Chandler*, 19 Wis. 434.

A stockholder held liable for debts due laborers, under above section, though the services were performed outside the State. *Clokus v. Hollister Mining Co.*, 66 N. W. Rep. 398.

Such liability is in addition to that under sections 1751, 1756, and may be enforced without first obtaining a judgment against the corporation. One who holds stock in his own name, if the books of the corporation show that he so holds it, is liable whether it is his absolutely or whether he holds it as collateral. *Gilman v. Gross*, 97 Wis. 224; *s. c.*, 72 N. W. Rep. 885.

As the liability is limited to the amount of stock held, and the object of the statute seems to be to provide a fund for the workmen or creditors of an insolvent corporation, and as it is generally necessary to enforce contribution among shareholders, the liability is equitable, and a single creditor cannot sue a single stockholder at law. *Coleman v. White*, 14 Wis. 700; *Cleveland v. Marine Bank*, 17 *id.* 545.

The stockholders become liable without transfer on the books, and their liability may be enforced in equity in the Circuit Court. *Gianella v. Bigelow*, 96 Wis. 185; *s. c.*, 71 N. W. Rep. 111.

In an action for contribution between guarantors of the note of a corporation, a debt due from the plaintiff to the corporation on a subscription to its stock cannot be allowed as an equitable counter-claim in favor of the defendant on the ground that the corporation, which would be answerable over to him, is insolvent, where such insolvency is a mere present inability of the corporation to pay its debts as they fall due, but there is a trust fund, consisting of unpaid subscriptions for stock, owing by solvent stockholders, amply sufficient to meet all liabilities. All solvent stockholders of the corporation, where stock subscriptions are unpaid, are interested parties in such a case, and

should be before the court for an adjustment of their rights before such an application of the liability of any one of them can be made. *Smith v. Dickinson*, 100 Wis. 574; *s. c.*, 76 N. W. Rep. 760.]

## Actions against stockholders.

§ 1770. Every corporation may maintain an action against any of its members or stockholders for any cause relating to the business of the corporation the same as against any other person; and like actions may be maintained by any member or stockholder against such corporation for any cause of action in his favor against the same. (R. S. 1878, § 1770.)

Corporation may sue and be sued. § 1748 (1), cross-references.

## Foreign Corporations.

## Capital stock of foreign manufacturing corporations.

§ 1770a. Every foreign corporation actually engaged in manufacturing within this State shall, within sixty days from the time of making a written request therefor by any resident creditor thereof, and annually thereafter upon a like request, file in the office of the secretary of State a statement showing the capital stock subscribed, the amount thereof actually paid in, the full name of each of its stockholders and the amount of stock held by each. Such request may be served by mail upon the president, secretary or other principal officer of said corporation or personally upon any officer or agent thereof who may be within this State. If any corporation shall fail to so file said report it shall forfeit all right to further carry on or transact business in this State and it shall be unlawful for it, or any person for it, to do or transact any business therein, and on such failure any person or agent who shall assume to act for or to transact any business for or on account of said corporation shall forfeit for each and every offense not less than twenty-five dollars nor more than one hundred dollars, which may be sued for in the name of the State by the district attorney of the county where such offense was committed, and the proceeds thereof, after deducting taxable costs, shall be paid into the school fund. (1883, ch. 220.)

Foreign manufacturing corporation to file statement. § 1770a. Foreign corporation may sue and be sued. §§ 3207, 3208. Service of summons on. § 2637. Attachment of property off. §§ 2731, 2736.

[An action cannot be maintained by a foreign insurance company upon a contract made with the company, unless it has complied with the provisions of the statute, by making the statement of its condition, as required, before entering into the contract. *Ins. Co. v. Harvey*, 11 Wis. 394.

The question whether a foreign corporation was such a one as might be licensed to do business in the State concerns only the State, and an action cannot be maintained by third parties merely to determine such question. *Foresters v. Commissioner of Insurance*, 73 N. W. Rep. 326.]

## Foreign corporations; purposes of incorporation — R. S., §- 1770b, 1771.

**Filing articles; attorney; process; forfeiture; contracts.**

§ 1770b. No corporation, joint-stock company, [or] express company incorporated or organized otherwise than under the laws of this State, except corporations or associations created solely for religious or charitable purposes, insurance companies and fraternal or beneficiary corporations, societies, orders and associations furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, shall transact business or acquire, hold or dispose of property in this State until such association, company, or corporation shall have caused to be filed in the office of the secretary of State a duly authenticated copy of its charter, articles of association or incorporation, and all amendments thereto which may be made while it shall continue to do business therein. Such association, company, or corporation causing a copy of its charter or articles to be so filed shall thereby be deemed to have made, constituted and appointed the secretary of State its true and lawful attorney upon whom all summonses, notices, pleadings or process in any action or proceeding against it may be served in respect to any liability arising out of any business, contract or transaction in this State, and thereby to have stipulated that service thereof upon the secretary of State or his assistant shall be accepted irrevocably as a valid service upon it; and such appointment and stipulation shall continue in force irrevocably so long as any liability of such association, company, [or] corporation remains outstanding in this State. Actions may be brought against any such association in the name by which it is commonly known. Whenever any such summons, notice, pleading or process shall be so served the secretary of State shall forthwith mail a copy thereof, postage prepaid, and directed to such association, company, [or] corporation at its principal place of business, or if it be organized in a foreign country then to its resident manager in the United States, and also an additional copy to such association, company, [or] corporation at its foreign address, or in any such case to such other person as may have been previously designated by it by written notice or request filed in his office. The failure to comply with any of the provisions of this section shall, for such violation, subject the association, company, [or] corporation or any agent, officer or person acting for it in this State to a penalty of five hundred dollars, to be sued for and recovered in the name of the State, with the costs of prosecution, by the district attorney of any county in which it or any of its agents or officers shall be located or reside or transact or attempt to transact any business; and such penalty when recovered, shall be paid into the treasury of the county for the benefit of the school fund.

Every contract made by or on behalf of any such association, company [or] corporation, affecting the personal liability thereof or relating to property within this State, before it shall have complied with the provisions of this section, shall be wholly void on its behalf and on behalf of its assigns, but shall be enforceable against it or them. In case any joint-stock company, [or] association shall not have any articles of incorporation, organization, [or] association, it shall file in the office of the secretary of State, under the seal, if any, of the company, and under the signature of two of its principal officers, a written instrument appointing the secretary of State an attorney for the purpose of receiving service of summons, notice, pleading and process as aforesaid, and stipulating that the service thereof shall constitute personal service upon it; and be subject to like penalties for failure to comply with this provision as hereinbefore provided in case of a failure to file such articles. For filing such articles every such association, company, [or] corporation shall pay to the secretary of State twenty-five dollars, and for amendments thereto ten dollars. Any corporation which has deposited in the office of the secretary of State a written instrument in compliance with section 1750a of the annotated statutes, shall not be required to make any further deposit of its articles under this act. (Thus amended by L. 1899, ch. 351.)

**CHAPTER LXXXVI.****Organization and General Powers of.****For what purpose.**

§ 1771. Three or more adult persons, residents of this State, may form a corporation in the manner provided in this chapter to conduct, pursue, promote or maintain any one or more of the following named purposes, the same being of a lawful nature:

Academies, and the establishment and maintenance thereof.

Agriculture, and any lawful business or purpose connected therewith.

Art galleries.

Asylums, and the establishment and maintenance thereof.

Benevolent, charitable or medical institutions.

Boards of trade.

Building of buildings or structures.

Building, constructing, maintaining and operating private steam logging railroads for use in carrying on and conducting a logging and lumbering business, to be used and operated for the private purpose and exclusive use of such corporation in such business and for transferring and conveying its logs, timber, lumber and other materials, supplies and employes, and for no other use or purpose whatsoever; also to acquire any such railroad heretofore constructed and to maintain, use and operate the same for such purposes.

## Purposes of incorporation — R. S., § 1771.

Burial of the dead, contribution to the expense of.	Leasing or letting of buildings, structures, docks, warehouses, elevators or hotels.
Cemeteries, and the purchase, holding and regulation thereof.	Libraries and other like institutions.
Charitable, benevolent or medical institutions.	Lighting by gas, electricity or other means.
Chemical, mechanical or manufacturing business.	Loaning money on security or otherwise.
Children, the protection and providing homes for.	Logging railroad companies as hereinbefore more particularly provided for.
Colleges, schools and academies.	Lumbering, logging and other like business.
Commission, storage, forwarding, shipping or transportation business.	Lyceums and other like institutions.
Contributing to the burial of the dead.	Manufacture and sale of gas, electric or other light.
Debating, declamation or public speaking and the practice and promotion thereof.	Manufacturing, mercantile and other like purposes, and the locating, building, encouraging and establishing manufactures and manufacturing establishments in cities and towns in this State.
Docks, and the construction, leasing or operation thereof.	Mechanical purposes.
Drainage, and for reclaiming wet, submerged, overflowed and swamp lands and the construction, maintenance and operation of drains, canals and ditches.	Medicinal or medical purposes.
Driving logs, timber and lumber.	Mercantile purposes.
Driving parks, and the establishment, maintenance and management thereof.	Mining, smelting, quarrying and other like business.
Elevators, and the construction and leasing thereof.	Musical purposes and the cultivation and practice of music.
Equipment of railroads, and the buying, selling, leasing or in any manner dealing in railway cars, locomotive engines or other railway equipment.	Mutual support and maintenance of the members of the corporation, their families or kindred in case of sickness, misfortune, poverty or death.
Execution and carrying out of testamentary trusts and powers in cases where the executors or trustees under any will, or one or more thereof, are authorized, requested or directed by its provisions to organize a corporation for any of the purposes mentioned in this section or elsewhere in these statutes.	Orphans, the protection of and providing homes for.
Forwarding, shipping, transportation, commission or storage business.	Personal property, the buying, selling, exchanging and dealing in all kinds thereof.
Games, sports and amusements of a lawful nature.	Power, furnishing of.
Guaranty of title to lands, and the guaranty of owners of real estate and real estate mortgages or other persons interested in real estate from loss by reason of defective titles, liens or incumbrances.	Private steam logging railroad companies as herein more particularly provided for.
Gymnastic or other like exercises, and the development of the bodily powers thereby.	Producing, mining, smelting and like purposes.
Heating or lighting or furnishing power or signals by electricity or otherwise.	Quarrying.
High schools, academies and other like institutions.	Real property, and the buying, selling, exchanging and dealing in all kinds thereof.
Holding, handling, driving or booming logs.	Renting and leasing buildings or structures of any kind and the building, selling and dealing therein.
Hospitals, asylums or other like institutions.	Rivers and streams, the improvement thereof for the purpose of log driving.
Hotels, and the purchase, construction, leasing and management thereof.	Schools, academies and like institutions.
Improvement of logging streams.	Scientific, literary, artistic and other like purposes.
Incumbrance and title guaranty companies as hereinbefore more fully provided for.	Seminaries, schools, colleges and other like institutions.
Industrial schools for the teaching and reformation of children lawfully committed thereto.	Shipping, forwarding and transportation business.
Inventions, and the encouragement or aiding of inventors and patentees.	Signals, furnishing of by electricity or otherwise.
	Sharpshooting and practice and competition therein.
	Smelting, mining, producing and like purposes.
	Storage, commission and like business.
	Storing and sorting logs and timber.
	Streams and rivers, the improvement thereof for logging purposes.
	Telegraphing, and the construction and management of telegraph lines or business of any kind.
	Telephone business, and the construction, maintenance and operation of telephones and telephone lines.

## Corporations by executors, etc.; articles — R. S., §§ 1771a, 1772.

Theaters, the construction and maintenance thereof and the business of conducting them.

Title insurance, as hereinbefore more particularly provided for.

Trading or mercantile purposes.

Transportation, shipping or forwarding.

Universities, schools or colleges.

Warehouses, and constructing, leasing and operating the same.

Water works, and construction, operation and maintenance thereof.

Or of any lawful business or purpose whatever, whether similar to the purposes herein mentioned or not, except the business of banking, insurance (other than title insurance), building or operating public railroads or plank or turnpike roads or other cases otherwise specially provided for. Any such corporation may be formed to have a capital stock divisible into shares or without any capital stock upon such plan as may be agreed upon.

Corporations must be organized under general laws. Const., art. IV, §§ 31, 32; art. XI, § 1. Powers of corporations. §§ 1748, 1775, 1791.

[Charter of a corporation organized under general law must be amended by general law only. Boom Co. v. Reilly, 44 Wis. 205.

This chapter does not in any way affect rights and authority of corporations organized under a special charter prior to its enactment. Dam Assn. v. Ketchum, 54 Wis. 313; s. c., 11 N. W. Rep. 551.

Telephone companies, though not specifically mentioned, may incorporate under above section with powers like those given to telegraph companies by section 1778. Tel. Co. v. Oshkosh, 62 Wis. 32; s. c., 21 N. W. Rep. 828.

A corporation whose primary object is without statutory authority can have no legal existence, even though among declared purposes are some for the promotion of which the law permits corporations to be formed. State v. Inv. Co., 88 Wis. 512; s. c., 60 N. W. Rep. 796.

The words "or for any lawful business or purpose whatever, except," etc., are general and extend only to things of nature kindred to those specifically mentioned. State v. Inv. Co., 88 Wis. 512; s. c., 60 N. W. Rep. 796.

Whether or not a mere resident of the State can, under above section, maintain action, *quaere. Id.*

## Executors or trustees may form, when.

§ 1771a. The executors or trustees under any will or one or more of such executors or trustees who are authorized, requested or directed by the provisions of any will to organize a corporation for any of the purposes mentioned in this chapter may, individually or as executors or trustees, or together with the legatees mentioned in such will, or one or more of such executors, trustees or legatees, associating with him or them such other persons as may be necessary for that purpose, sign, execute, verify and acknowledge articles of incorporation or association under the provisions of this chapter for the purpose of carrying out the intentions of the testator as expressed in his will, and organizing such corporation, and in such case may transfer and convey to such corporation any property of the tes-

tator mentioned and referred to in such will and authorized or required to be used for such purpose, and said executors, trustees, or legatees, or two or more of them, may subscribe to the capital stock of such corporation to the amount of the value of the property mentioned or referred to in such will, and such executors or trustees may convey such property to such corporation in payment of the stock so issued and subscribed without application to or authority from any court. (1887, ch. 180.)

## Articles to contain what; fees.

§ 1772. In order to form such a corporation the persons desiring so to do, shall make, sign, and acknowledge written articles containing:

1. A declaration that they associate for the purpose of forming a corporation under these statutes, and of the business or purposes thereof.

2. The name and location of such corporation; but such name shall not contain the names of individuals in the manner in which they are ordinarily used in partnership or business names; no corporate name shall be held illegal because of the omission of the word "limited."

3. The capital stock, if any, the number of shares and the amount of each share.

4. The designation of general officers and of the number of directors, which shall not be less than three; and the directors may be required to be classified into three classes so that one-third shall hold their offices for one year, one-third for two, and one-third for three years; in which case all directors elected subsequent to the first shall hold their offices for three years except when elected or appointed to fill vacancies.

5. The principal duties of the several general officers respectively.

6. The method and conditions upon which members shall be accepted, discharged or expelled; and, in stock corporations, persons holding stock, according to the regulations of the corporation, and they only, shall be members.

7. Such other provisions or articles, if any, not inconsistent with law, as they may deem proper to be therein inserted for the interests of such corporations or the accomplishment of the purposes thereof, including, if desired, the duration of its existence. In case the corporation is formed without capital stock the articles shall fix the time and place for the first meeting for the election of officers, and the signers of such articles shall give notice thereof to the members in the manner provided in the next section. Such original articles or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be recorded by the register of deeds of the county in which such corporation is located; and no corporation shall, until such articles be so left for record, have legal existence. A like

Temporary control; first meeting — R. S., §§ 1772a, 1773.

verified copy and a certificate of the register showing the date when such articles were left for record shall, within thirty days, be filed with the secretary of State, and for a failure so to do, each signer of any such articles shall forfeit twenty-five dollars. For filing the articles of incorporation of corporations for the manufacture of beet sugar, or of butter, cheese or other dairy products there shall be paid the secretary of State ten dollars, and for filing an amendment to such articles five dollars; for filing in his office the articles of any other corporation, except as is otherwise specifically provided in these statutes, the corporators shall pay twenty-five dollars if the capital stock of the corporation is fixed therein at twenty-five thousand dollars or less, and one dollar for each additional one thousand dollars of capital stock; and every corporation organized and doing business under the laws of this State which may hereafter increase its capital stock, shall pay as a fee therefor, fifty cents for each one thousand dollars of increase, and, except as above provided, for filing any amendment to its articles, other than for the purpose of increasing its capital stock, shall pay ten dollars; provided, that no fee shall be required from any corporation organized without capital stock, or organized exclusively for educational, benevolent, charitable or reformatory purposes, the articles of which provide that no dividend or pecuniary profits shall be declared to the members thereof. (R. S. 1858, ch. 76, §§ 1-8; ch. 68, §§ 2, 3; R. S. 1878, § 1772, amended by revisers of 1898.)

Register of deeds must keep book of record. § 763. Articles, how amended. §§ 1774, 1790. Principal office must be in the State. § 1750. Defect in articles, how cured. § 1791. Articles as evidence. § 4181. Existence of corporation presumed. § 4199.

[The articles need not designate with particularity all powers, but may designate in general terms purposes for which the corporation is organized, and when organized, such corporation may exercise all such powers as are usual and necessary to accomplish its purpose, not in conflict with the law of the State. *Wendell v. State*, 62 Wis. 300; s. c., 22 N. W. Rep. 435.

Above section and section 1774 must be construed together. *Wood v. Gospel Assn.*, 63 Wis. 9.

Provision of first clause of subdivision 6 has no application to the articles of a stock corporation, and their omission therefrom will not affect the legality of its incorporation. *Mfg. Co. v. Croft*, 69 Wis. 256; s. c., 34 N. W. Rep. 143.

Provision that articles shall state "name and location" of the corporation does not authorize them to fix the place where its principal office shall be. *Steamship Co. v. Milwaukee*, 83 Wis. 590; s. c., 53 N. W. Rep. 839.

Right of private person to a suit to enjoin a corporation from carrying on business, on the ground that its incorporation is illegal, determined. Supreme Court of I. O. F. of Canada v. Supreme Court of U. O. of Foresters, 68 N. W. Rep. 1011.]

#### Curative provision.

§ 1772a. Whenever in the organization of corporations under chapter 146 of the laws of 1872 there may have been a failure to

verify a copy of the articles recorded in the office of the register of deeds of the proper county, such failure shall not affect the validity of the corporation, but the same shall be a body corporate from and after the recording of such copy the same as though the copy had been duly verified. In any controversy as to the validity of such corporation it shall be presumed that the copy thus recorded is a true copy of the original articles, and such copy, or a certified copy of the record thereof, shall be *prima facie* evidence in all courts and places of the organization of such corporation. (1893, ch. 80.)

#### Temporary control; first meeting; liability of promoters.

§ 1773. Until the directors or trustees shall be elected the signers of the articles of organization shall have direction of the affairs of the corporation, and make such rules as may be necessary for perfecting its organization, accepting members or regulating the subscription to the capital stock. In stock corporations the first meeting may be held at any time after one-half of the capital stock shall have been subscribed; and may be called by any two signers of the articles, at such time and place as they shall appoint, by giving ten days' personal notice thereof, in writing, to each subscriber of stock, or by publishing notice thereof for at least two weeks before such meeting in some newspaper published at or nearest to the designated place of location of the corporation; or such meeting may be held without previous notice if all the subscribers for stock be present in person or by duly authorized attorney. No such corporation shall transact business with any others than its members, until at least one-half of its capital shall have been duly subscribed and at least twenty per centum thereof actually paid in; and if any obligation shall be contracted in violation hereof the corporation offending shall have no right of action thereon; but the signer or signers of the articles and the subscriber or subscribers for stock transacting such business or authorizing the same, or having knowledge thereof, consenting to the incurring of any debt or liability, as well as the stockholders then existing, shall be personally liable upon the same. The signers of the articles of organization may abandon the organization and revoke the articles at any time before fifty per centum of the stock has been subscribed and twenty per centum thereof paid in by signing and acknowledging a written agreement revoking the original articles of organization and recording the same or a copy thereof, verified in the manner prescribed by subdivision 7 of section 1772, in the office of the register of deeds and filing a like verified copy in the office of the secretary of State; provided, that the abandonment of the organization or the revocation of the

## Amendment of articles — R. S., § 1774.

articles in pursuance hereof shall not relieve such corporation or any signer or subscriber for stock or any stockholder then existing from any liability hereby created. (R. S. 1858, ch. 78, § 3; amended by revisers of 1898.)

Consent to meetings not regularly called. § 1761. Record of proceedings, how kept. § 1759. Quorum of stockholders. § 1749.

[Where board of directors, in issuing new stock to shareholders generally, refuse to issue to particular stockholder his proportion thereof, he may compel its issue to him by suit in equity against the corporation, though he might have maintained an action at law against it for damages. Dousman v. M. & S. Co., 40 Wis. 418.]

No call or assessment, subsequent to the preliminary one, upon such subscription to stock of a corporation can be made unless, in compliance with above section, at least one-half of the stock has been subscribed, and at least 20 per cent. thereof actually paid in. And this is so even though subscriber agreed to pay the balance of such shares at such times and in such installments as the same shall be called for by said corporation. Mining Co. v. Sherman, 74 Wis. 226; s. c., 42 N. W. Rep. 226.

In an action to recover a call or assessment the complainant must aver compliance with above section. Id.

In an action to enforce a personal liability upon such a contract under above section, it is not competent for plaintiff to prove that agent acted for the stockholders individually or that they ratified the contract. Buffington v. Bardon, 80 Wis. 635; s. c., 50 N. W. Rep. 776.

Under sections 1772, 1773, a corporation becomes such when its articles are filed for record. Badger Paper Co. v. Rose, 70 N. W. Rep. 302.

After articles are filed for record, but before organization, the signers of the articles may contract for materials to carry on the business. Id.]

#### Who are stockholders.

One does not become a stockholder by signing a paper which binds him to take stock in a corporation to be formed, though that paper be in the form of a present subscription for stock. "Then existing" means when the debt is incurred. Badger Paper Co. v. Rose, 95 Wis. 145; s. c., 70 N. W. Rep. 302. But when such a proposal is presented to the corporation and accepted by it, each subscriber thereto becomes a stockholder, and his contract of subscription cannot be rescinded for any fraud by the promoters of the corporation to which it was not a party. Franey v. Warner, 71 N. W. Rep. 81, 84; s. c., 96 Wis. 222.

#### Liability of promoters for fraud.

For sale of option to corporation for an excessive amount. Pittsburg Co. v. Spooner, 74 Wis. 307. See also Yale Gas Stove Co. v. Wilcox, 25 L. R. A. 90-97, note.

A promoter may sell property to the corporation for any price he can get if there is no fraud. Promoters are fiduciaries of the corporation, and owe it the duty to faithfully state the facts as to property which would influence it in acquiring it. Fountain Spring Park Co. v. Roberts, 92 Wis. 345; s. c., 66 N. W. Rep. 399.

The promoters of a corporation fraudulently represented that a certain price was to be paid for land to be conveyed to it, and procured subscriptions on that basis, but purchased the land at a much lower price, appropriating the profit to themselves. The officers had knowledge of the plan. It was held that an innocent subscriber might elect to remain a subscriber and sue the promoters at law for damages, or tender back what he may have received and sue in equity for a rescission of the contract of subscription and a return of the money paid thereon. If the proposal was made to and accepted by the corporation, each subscriber became a stockholder, and there could be no rescission for any fraud to

which the corporation was not a party; but a bill against both corporation and promoters would be maintained for relief against the latter. Franey v. Warner, 96 Wis. 222; 71 N. W. Rep. 81.

The same rule was laid down in Hebegn v. Koefeler, 97 Wis. 313; s. c., 72 N. W. Rep. 745, in which stockholders sued promoters to rescind a sale of real estate to the corporation and to recover profits fraudulently made by the promoters on the sale. The payment by the plaintiffs of an assessment on their stock was held not to be a ratification of the sale, since they did not then know of the fraud. Where a purchaser of real estate, after paying part of the price, and assuming obligations for the balance, organized a corporation, which was not thought of when he made the purchase, but for the purpose of taking the property off his hands at a price which was known to the other subscribers for stock, such corporation cannot complain that it was charged more for the property than the cost to the original purchaser, in the absence of false representations as to the value thereof. A prospectus for a corporation which states, "cost of ground, \$40,000," is not a representation that that was the cost to a stockholder who proposed to turn the property over to the corporation. The fact that a promoter of a corporation personally pays a commission to induce another to subscribe, or to procure other subscribers, who would likely be valuable patrons of the business to be carried on, does not constitute a fraud upon the corporation, or the other subscribers to its capital stock. Milwaukee Cold Storage Co. v. Dexter, 99 Wis. 214; 74 N. W. Rep. 976.

One purchasing land in his own name and paying therefor, and afterwards organizing a corporation, to which he offers to sell the property, does not become an agent or trustee of the corporation. Id.

Where several persons unite to promote a corporation and defraud it of its assets for their benefit, and for that purpose some become officers and obtain control, and the scheme is consummated, one of the conspirators being the corporation, all are equally liable without regard to the division of profits, and an action will lie by the injured corporation to compel an accounting. Zinc Carbonate Co. v. First Nat. Bank, 79 N. W. Rep. 229.

Defendant had obtained the right to sell land and retain as commissions all he received on a certain price. He engaged others to aid him, and the parties with others formed a corporation of which they were elected the officers. They then induced the corporation to buy the land at an advance over the price fixed by the vendor, secretly keeping the difference. It was held that the corporation might compel an accounting. First An. Land Co. v. Hildebrand, 79 N. W. Rep. 753.]

#### Amendment of articles; notice of change of name.

§ 1774. Any corporation organized under this chapter may, at any meeting of its members, by a vote of at least the owners of two-thirds of all the stock then outstanding, in case of stock corporations, or at least one-half of the members of corporations without stock, unless a greater vote shall be required in its articles, amend its articles of organization so as to modify or enlarge its business or purposes, change its name or location, increase or diminish its capital stock, change its officers or the number of directors or provide anything which might have been originally provided in such articles; but no corporation without stock shall change substantially the original purposes of its organization. Such amendment shall be adopted only in accordance with the articles of organization, if a mode of amending the same

## General powers; stock in other corporations — R. S., § 1775.

shall have been therein prescribed. When adopted a copy of such amendment, with a certificate thereto affixed, signed by the president and secretary, or if none, the correspondent officers, and sealed with the corporate seal, if there be any, stating the fact and date of the adoption of such amendment and that such copy is a true copy of the original, shall be recorded in the office where the original articles are recorded; and the register shall note on the margin of the record of such original, the volume and page where every such amendment is recorded; and no amendment shall be of effect until so recorded. Within thirty days such officers shall file a like certified copy with the secretary of State, and in case of failure so to do, shall each forfeit twenty-five dollars. Whenever the corporate name shall be changed, the secretary shall publish a notice thereof in a newspaper published at or nearest to the place of location of such corporation for three weeks, and if he shall fail for two months so to do, shall forfeit twenty-five dollars. No change of location of any such corporation, if beyond the limits of the county, shall be valid until the articles of organization and all amendments shall have been recorded in the office of the register of deeds of the county to which the same shall be changed (1853, ch. 68, §§ 15, 18; 1872, ch. 144, §§ 19, 21; 1872, ch. 146, § 4; 1874, ch. 113, § 6; 1874, ch. 307.)

Articles to contain what. § 1772. Amendment of. § 1790. Defect in, how cured. § 1791. Amended articles as evidence. § 4181.

[An amendment of articles is inoperative until a certificate thereof is recorded with register of deeds. *Wood v. Building Assn.*, 63 Wis. 11; s. c., 22 N. W. Rep. 756.

An allegation in complaint that no certificate of an amendment to articles has been filed in office of register of deeds, is equivalent to an averment that no such certificate has been left for record. *Id.*

Above section and section 1772 are in pari materia, and must be construed together. *Id.*

If the name of a corporation be changed, it must sue and be sued, in respect to its prior rights and liabilities, by its new name. *Dousman v. Milwaukee*, 1 Pln. 81.

Although an attempt to change the name of a corporation by amendment of its articles was ineffectual because such an amendment was not recorded as required by section 1774, a voluntary assignment by the corporation under the new name for benefit of creditors was valid at law and in equity. *W. & H. Co. v. Witte*, 89 Wis. 537; 62 N. W. Rep. 518.

A corporation organized under a special statute may change its name under this and the following sections. *Merrill v. Wisconsin F. College*, 74 Wis. 415.]

## General powers; stock in other corporations.

§ 1775. Every such corporation, when so organized, shall be a body corporate by the name designated in its articles, and shall have the powers of a corporation conferred by these statutes necessary or proper to conduct the business or accomplish the purposes prescribed by its articles, but no other or greater;

and may take by gift, devise, purchase or otherwise, and manage and hold, and may, by a vote of a majority of the stock given at any regular meeting, or at any special meeting duly called for the purpose, sell and convey or authorize to be conveyed, all or any portion of the property owned by it, whether real, personal or mixed; and may, by a similar vote, mortgage or lease any such property whenever it shall be necessary for its business purposes or the protection or benefit of its property held or used by the corporate business, however the same may have been acquired. But no such corporation shall take or hold stock in any other corporation except upon and with the assent of the holders of three-fourths of the capital stock of both the corporation proposing to take such stock and the corporation in which it is proposed to be taken; provided, that any corporation heretofore or which may be formed or organized, under or in pursuance of any general or special law of this State for the purpose of carrying on a logging or lumbering business, or for engaging in the manufacture of lumber, or of the improvement of the navigation of any river or stream, for log-driving or lumbering purposes, or the running, driving, booming, sorting, brailing or rafting of logs, timber, lumber or other materials upon or down any river or stream; and any foreign corporation, formed or organized for similar or kindred purposes, may upon the assent of the holders of three-fourths of the capital stock thereof, shall have authority to purchase, take and hold stock in, and in its corporate capacity become a subscriber to, the capital stock of any other corporation or corporations, foreign or domestic, created or formed for any one or more of the same or similar purposes; provided, also, that any corporation formed or organized, or which may be formed or organized under or in pursuance of any general or special law of this State, for the purpose of mining, smelting, quarrying, or any mechanical or manufacturing purpose, upon and with the assent of three-fourths of its capital stock, may in its corporate capacity, subscribe for, purchase, take and hold stock in any corporation, foreign or domestic, formed for the purpose of manufacturing, creating or generating any kind of power or light, to be used as a mechanical agency, when such power or light is to be used wholly, or in part, in facilitating the operations of such mining, smelting, quarrying or other mechanical or manufacturing company, or the transaction of its business. Provided, also, that any street railway corporation, organized under or in pursuance of any law of this State, or any other State, and which owns or controls a street railway, operated by electric power, or which shall make the purchase hereinafter described, for the purpose of being so operated, may purchase, take and hold all or any part of the real and

## General powers; stock in other corporations — R. S., § 1775.

personal property, rights, privileges, ordinances and franchises of any other street railway company, foreign or domestic, operating or to operate a street railway by electric power or of any corporations, foreign or domestic, now or hereafter existing, formed for the purpose of manufacturing, creating or generating electricity for power, light or heat, or any other purpose, and may purchase, take and hold stock in, and in its corporate capacity, become a subscriber to the capital stock of any other similar street railway or any electrical corporation or corporations, foreign or domestic, now or hereafter existing; the terms of such purchase to be assented to by the holders of three-fourths of the capital stock of each company buying or selling as aforesaid at any general or special meeting of such stockholders; the consideration for such purchase may be paid in the stock or bonds, or both, of the purchasing company; the conveyance of property to be by deed or bill of sale, or both, in the usual form; the transfers of stock to be by indorsement, in the usual form. The electric power so acquired may be sold or leased by the purchasing company, for power or light or heat, or other purpose, to all persons and corporations for cash, or for the stock, or bonds, or both, of any corporation to which the same is furnished; and provided, also, that all electric-light companies, foreign or domestic, now or hereafter existing, shall have all the rights, powers and privileges conferred by this section on street railway corporations. Provided, further, that any corporation organized for the purpose of locating, building, encouraging and establishing manufactories and manufacturing establishments in this State, upon the assent of the holders of three-fourths of the capital stock thereof, may purchase, take and hold stock in, and in its corporate capacity become a subscriber to the capital stock of any corporation so aided or encouraged, to the amount of the actual cash paid or other property contributed to any such manufacturing corporation. (1853, ch. 68, § 7; 1872, ch. 144, §§ 4, 5, 12; 1877, ch. 168; 1872, ch. 146, § 1; 1874, ch. 113, §§ 2, 5; 1876, ch. 189, §§ 5, 7; 1891, ch. 283; 1891, ch. 403; 1897, ch. 341.)

General powers. § 1748. Of corporations hitherto formed. § 1791.

[Corporation can exercise only those powers expressly conferred, and those necessarily incident to purposes of its creation. Madison, etc., Road Co. v. Watertown, etc., Road Co., 7 Wis. 59.]

And in exercising the powers conferred upon a corporation, it may adopt any proper and convenient means directly to their accomplishment, not amounting to the transaction of a separate unauthorized business. *Id.*; Clark v. Farrington, 11 Wis. 306.

A boom company may make contracts for storing logs in any legal manner, and not merely as it is expressly authorized. Boom Co. v. Plumer, 35 Wis. 274.

A corporation is not only incapable of making a contract which is forbidden by its charter, but in general it can make only such as are necessary,

either directly or indirectly, to effect the objects of its creation. Bank v. Sherwood, 10 Wis. 230.

While contracts which it has no authority to make may be void, contracts which are within general scope of its powers, but in excess of those powers in some particulars, are not void, unless by reason of such excess they are against public policy. Ins. Co. v. Dhein, 43 Wis. 421.

Under the power to loan money for one year, on bond and mortgage, a loan for two years on note and mortgage is valid. *Id.* And a bank with full power to borrow money, and authorized to loan money at 10 per cent, may discount notes at 12 per cent. Bank v. Sherwood, *supra*. But it cannot engage in a business separate and distinct from that authorized. Clarke v. Farrington, *supra*; Waldo v. Ry Co., 14 Wis. 575.

A purchaser from a corporation cannot defend an action for price of ground that it exceeded its legal powers in acquiring it. Bank v. R. R. Co., 17 Wis. 372. Nor can the seller of property to a corporation who has received the price therefor, question its right to buy, or reclaim the property. *Id.*; Burns v. R. R. Co., 9 Wis. 450.

A plankroad company has no power to loan money, or become security for loaned money. Madison, etc., Road Co. v. Watertown, etc., Road Co., *supra*.

Where ultra vires appears on face of complaint filed by corporation, advantage may be taken of it by demurrer. *Id.* Dealings in grain by a common carrier held to be ultra vires, Packet Co. v. Shaw, 37 Wis. 655.

Where a corporation may receive a negotiable instrument for any purpose, the bona fide indorsees of such instruments, though given for an unauthorized purpose, will not be allowed to suffer. Cornell v. Hitchens, 11 Wis. 353.

The taking of a mortgage to secure payment for stock in a railroad company is not an unwarranted dealing in real estate by a company. Clarke v. Farrington, *supra*.

Party having dealt unlawfully with a corporation will not be permitted to take advantage of his own wrong to the injury of the innocent person. *Id.*

When not forbidden by charter, a corporation may receive materials, labor or land in payment for stock. Blunt v. Walker, *supra*. When a corporation undertakes to make a contract entirely foreign to purposes and objects of its creation, such contracts are void. *Id.*

Corporation may receive securities for its debts created in usual course of business, in same manner as a natural person, in absence of provision to the contrary in its charter. Blunt v. Walker, 11 Wis. 334.

The taking of a mortgage to secure payment of such a debt cannot be called a dealing in lands. *Id.* Though it cannot be empowered to deal in real estate, yet it may acquire and transmit a title to lands as an incident to its power to make general contracts touching a particular business. When a corporation has power to make a contract, it may adopt any mode calculated to accomplish it which an individual would. *Id.*

Although it has not power to make a note for its own debt, yet it may receive one from a natural person which will be good in hands of an innocent holder to whom it has been legitimately transferred. *Id.*

Acts done by a corporation in violation of a charter are not necessarily void. They may by such acts acquire title to property and transmit it to others. Bank v. R. R. Co., 17 Wis. 372.

A corporation may sell or pledge a note and mortgage executed to it. Bank v. Rith, 23 Wis. 339.

A town, city or county may give or loan its credit in aid of a corporation. Bushnell v. Beloit, 10 Wis. 195.

The Constitution of Wisconsin expressly recognizes the power of municipal corporations to loan their credit. Clark v. Janesville, 10 Wis. 137.

A corporation organized for the purpose of manufacturing and selling beer may guarantee the payment of the rent of a place leased for the sale of beer. Winterfield v. Cream City Beer Co., 96 Wis. 239; s. c., 71 N. W. Rep. 101. Where a corporation violates its charter in purchasing real property, its title thereto and right to enjoy the

## List of officers; directors — R. S., §§ 1775a, 1775b, 1776.

same cannot be inquired into collaterally in actions between private parties or between the corporation and such parties. *Farwell Co. v. Wolff*, 96 Wis. 10; 70 N. W. Rep. 289.

After the execution of a contract of agency a corporation cannot avoid it on the ground that it was ultra vires. *McElroy v. Minnesota Percheron Horse Co.*, 96 Wis. 317; s. c., 71 N. W. Rep. 652.]

**Acquisition of rights of persons.**

§ 1775a. Corporations may take and acquire, by lease, purchase, sale, conveyance or assignment, and thereafter own, hold and enjoy any right, privilege or franchise heretofore or hereafter granted to or conferred upon any person or persons whomsoever by any law of this State in all cases where such right, privilege or franchise would be in direct aid of the business for which such corporation so acquiring or purchasing the same was organized. (1883, ch. 221, as amended by 1891, ch. 127.)

Purchasers may reorganize. § 1788.

[Under this section the franchise of a street railroad may be sold. *Wright v. Milwaukee, etc., Co.*, 95 Wis. 29; s. c., 69 N. W. Rep. 791.

This section is recognized as effectual for the purpose designed, and an assignment of franchises made under it rendered the assessment of the same property against the corporations which were parties to the assignment void. *State v. Anderson*, 97 Wis. 114; 72 N. W. Rep. 386.]

**List of officers to be filed; process.**

§ 1775b. Every private corporation incorporated or organized under any law of this State shall on or before the first day of October, 1898, and thereafter within ten days after each election or appointment or any subsequent change of such officers respectively file in the office of the register of deeds of the county in which the corporation is located and where its articles of incorporation are recorded, a list containing the names of its president, vice-president, if any, secretary, treasurer, cashier or managing agent on whom service of process, notices or orders may be made as provided in subdivision 10 of section 2637. Any such corporation hereafter formed shall file such list in the office of the register of deeds of the county in which such corporation is located, and where its articles of incorporation are recorded, within ten days after each election or appointment or any subsequent change of such officers respectively; and in all cases where any such corporation shall fail to comply with the provisions hereof and from and after the time when it shall be required to file any such list until the same shall be filed as aforesaid, service of all legal process, notices, orders or other legal papers may be lawfully and effectively made upon any such corporation by delivering to and leaving with the register of deeds of the county where such corporation is located and where its articles of incorporation are recorded, true copies of such legal process, notices, orders or papers, in which case service so made shall be of like force

and effect as if the same had been served upon any officer or agent of such corporation designated by said subdivision 10 of section 2637. Such service may also be made upon said corporation in the manner provided in section 2637, and by publication in the case provided in subdivision 6 of section 2637. (Thus amended by L. 1899, ch. 46; approved March 26, 1899.)

It shall be the duty of the register of deeds in each county to keep a separate index book in which shall be entered alphabetically the names of all corporations filing such lists, with the date of filing same and number of instrument. (L. 1899, ch. 46, § 2.)

**Directors to manage.**

§ 1776. The stock, property, affairs and business of every such stock corporation, shall be under the care of and be managed by a board of directors who shall be chosen annually by the stockholders from among their number, at such time and place as shall be provided by the articles of organization or the by-laws, and shall hold one year and until their respective successors are chosen, except that when classified by the articles of organization they may be elected and hold accordingly. The directors shall choose one of their number president, and such other officers as the corporate articles and by-laws require for such term as shall be prescribed thereby; and may fill any vacancy in their board, happening after any regular annual election, until the next succeeding election. (1853, ch. 68, §§ 6, 8, 11; 1872, ch. 144, §§ 7, 8.)

**Quorum of directors.** § 1749. Jurisdiction of court over directors. § 3237.

[Where board of directors, in issuing new stock to shareholders generally, refuse to issue to a particular stockholder his proportion thereof, he may compel its issue by suit in equity against the corporation, though he might probably have maintained an action at law for damages. *Dousman v. M. & S. Co.*, 40 Wis. 418.

When mortgage to directors to secure claims fraudulent. *Hinz v. Van Dusen*, 70 N. W. Rep. 657.

Directors held liable for corporate assets misapplied or lost through their negligence or fraud. *Gores v. Day*, 74 N. W. Rep. 787.

This section does not limit the term of office of directors to one year, nor the term of an attorney appointed by them. An allegation in an action upon the bond of such an attorney that he was appointed for the term of two years, shows that his term was for that period. *Germania S. & B. Verein v. Flynn*, 92 Wis. 201.

A sale of all the property of a corporation made by its president, will be sustained, though there is no record of any action by the stockholders or board of directors conferring authority, where the president had full control of the property and business of the company, under its by-laws, and was its chief managing officer, and the board of directors were informed of the proposition to purchase, and made no attempt to rescind the sale, but permitted the purchaser to enter into possession of the property. *N. W. Fuel Co. v. Eau Claire Fuel & Supply Co.*, 78 N. W. Rep. 584.]

**By-laws.**

[Directors are not authorized by this section to adopt by-laws. *No. Milwaukee Town Site Co. v. Bishop*, 79 N. W. Rep. 785.]

## Reorganization; voluntary dissolution — R. S., §§ 1776a, 1788, 1789.

§ 1776a. In all cases in which one corporation shall hold stock in another, such stock shall, at all meetings of the stockholders of the latter corporation be voted by the president of the former unless its board of directors, by resolution adopted at any regular or special meeting of such board, designate some other officer or officers for that purpose; and any one or more officers of the former corporation may be chosen, qualify and act as directors and officers of the latter corporation as in the case of other stockholders. (Thus inserted by L. 1899, ch. 100; approved March 30, 1899.)

**Purchasers of corporate rights may reorganize.**

§ 1788. Any person or association of persons, which shall have, or may hereafter, become the owner or assignee of the rights, powers, privileges and franchises of any corporation created or organized by or under any law of this State, by purchase under a mortgage sale, sale in bankrupt proceedings, or sale under any judgment, order, decree or proceedings of any court in this State, including the courts of the United States sitting herein, may, at any time within two years after such purchase or assignment, organize anew by filing articles of organization as provided in this chapter or elsewhere in these statutes respecting corporations for similar purposes, and thereupon shall have the rights, privileges and franchises which such corporation had, or was entitled to have, at the time of such purchase and sale, and such as are provided by these statutes applicable thereto. They may fix at what price, or for what number of shares, the rights, privileges, powers, franchises and property of such former corporation purchased by them shall be put into the new organization. Any railroad corporation existing under the laws of this State, with the authority or the approval of the holders of a majority of the shares of its capital stock given either in writing or at a meeting called for that purpose, may purchase any railroad and other property, franchises, rights and immunities, in this or any other State or States, of any insolvent railroad corporation whose railroad shall be sold at mortgage sale, or in bankruptcy or upon any other judicial sale, provided that the railroad so purchased shall not be parallel or competing with any constructed railroad owned or controlled and operated by the purchasing corporation, and shall be a continuation of, or be connected with, or intersected by, a line of railroad owned, leased or operated by such purchasing corporation, or which it shall be authorized to build; and in consideration of such railroad and other property, franchises, rights and immunities, so purchased, any such purchasing railroad corporation may issue and deliver its own bonds and shares of its capital stock, in such amounts and at such prices, and on such terms and conditions, including any terms

and conditions as to voting power and dividends in respect of any such stock, as shall be so approved by the holders of a majority of the stock of such purchasing railroad corporation; and any and all purchases, and issues of stocks and of bonds such as are authorized by this act, heretofore made by any railroad corporation existing under the laws of this State are hereby legalized and confirmed. (Thus amended by L. 1899, ch. 198.)

## See § 1775a.

[A boom company organized under above section by persons who purchased the property and franchises of the company first organized, is not liable for injuries caused by an obstruction placed in river by the latter, of which the former had a knowledge. *Neff v. Boom Co.*, 50 Wis. 585; s. c., 7 N. W. Rep. 553. It seems that the successor of a former company, organized under this section, can exercise no powers not possessed by former company. *Menasha v. R. R. Co.*, 52 Wis. 414; s. c., 9 N. W. Rep. 396.

It was the manifest intention of chapter 115 of Laws of 1872 (embodied in this section), to ratify and confirm all prior transfers and to accept all prior surrenders of corporate rights. *Combes v. Keyes*, 89 Wis. 297.

A corporation formed by the consolidation of several others does not, by assuming all their debts, obligations and contracts, render itself liable for a tort theretofore committed by one of them. *Cotzhausen v. H. W. John Mfg. Co.*, 100 Wis. 473; s. c., 76 N. W. Rep. 622.]

**Voluntary dissolution.**

§ 1789. Any corporation organized under any law may, when no other mode is specifically provided, dissolve by the adoption of a written resolution to that effect at a meeting of its members specially called for that purpose, by a vote of the owners of at least two-thirds of the stock in the case of stock corporations and of one-half the members in other corporations; but when a mode or process of dissolution shall have been provided in the articles of organization it shall be conducted accordingly. One copy of such resolution, with a certificate thereto affixed, signed by the president and secretary, or, if none, the correspondent officers and sealed with the corporate seal, if there be any, stating the fact and date of the adoption of such resolution, that such is a true copy of the original, the whole number of shares of stock, and of members of such corporation, and the number of members who, or of the shares of stock whose owners, voted for its adoption, shall be recorded as an amendment to its article is required to be recorded by section seventeen hundred and seventy-four, and a like copy filed with the secretary of State. Thereupon such corporation shall cease to exist except for winding up its affairs. Whenever the articles of organization shall provide a term to the duration of a corporation, it shall cease to exist at the time so fixed, except as aforesaid. (1872, ch. 146, § 5; 1874, ch. 113, § 7.)

See § 1774. Surrender of corporate rights.  
§ 1763. Actions to dissolve a corporation. §§ 3240 et seq.

## Amendment of articles; trusts — R. S., §§ 1790, 1791, 1791k, 1791j.

[Dissolution does not deprive corporate creditors of right to pursue stockholders under section 1769. Sleeper v. Goodwin, 67 Wis. 577; s. c., 31 N. W. Rep. 335.

A railroad company which has been divested of all its property, and for twenty-six years has not owned property, done business, elected officers or kept an office in this State has lost its corporate existence. A former secretary of such company, when it is sought to maintain an action against it, may intervene and inform the court of the facts which had worked its dissolution. Combes v. Keyes, 89 Wis. 297; s. c., 62 N. W. Rep. 89. See Atty.-Gen. v. Superior, etc., R. Co., 93 Wis. 604; s. c., 67 N. W. Rep. 1138, for further illustrations of acts which effect the loss of corporate rights.]

**Amendment of articles.**

§ 1790. Any corporation organized under any special charter or general law, for any of the purposes for which corporations may be formed under this chapter, may amend its charter or articles of organization, according to the provisions of section seventeen hundred and seventy-four, and may at a meeting of the members, by a vote of the owners of at least two-thirds of the stock, in the case of stock corporations, and of a majority of the members in other corporations, abandon its organization and organize under this chapter by the adoption of articles of organization according to section seventeen hundred and seventy-two. A true copy of such articles, together with a certificate of the president and secretary, sealed with the corporate seal, stating the fact and date of adoption of such articles, that such copy is a true copy of the original, the whole number of the shares of stock and of the members of such corporation, and the number of members who voted, or of the shares of stock whose owners voted, for its adoption, shall be recorded and filed by the president or secretary in like manner, with like effect, and subject to the like penalties, prescribed in section seventeen hundred and seventy-two. Provided, that in amending the charter of any corporation organized under any special, general, or private and local law, which did not require that its charter or articles of organization should be recorded in the office of the register of deeds of the county in which such corporation was located, it shall be sufficient to record a certified copy of such amendment in the office of the register of deeds of such county, and to file a like copy with the secretary of State. (1872, ch. 144, §§ 22, 23; 1877, ch. 77; 1895, ch. 66.)

Articles, what to contain. § 1772. May be amended. § 1774. Defects, how cured. § 1791. Amended articles as evidence. § 4181.

**Defective organization, how cured.**

§ 1791. Every corporation heretofore lawfully organized under any general law, for any of the purposes embraced in section seventeen hundred and seventy-one, and existing at the time of the adoption of these statutes, shall continue in existence in the same manner, and have the same powers, as if lawfully organized under this chapter and be governed by these statutes; and every

joint-stock company organized under the provisions of chapter seventy-three of the Revised Statutes of eighteen hundred and fifty-eight, prior to the first day of January, eighteen hundred and seventy-five, shall be deemed legally organized and remain in existence with the rights and privileges granted thereby, unaffected by the repeal thereof. Whenever articles of association have heretofore and since the enactment of the Revised Statutes of 1878 been filed in the office of the secretary of State, or in the office of the register of deeds, for any of the purposes for which corporations may be formed under said chapter 66 [86] of the Revised Statutes of 1878, and an organization has been formed under and pursuant to said articles, such organization is hereby declared to be legal, and the corporation to be duly organized. (1872, ch. 144, § 27; 1872, ch. 146, § 14; 1875, ch. 221; 1883, ch. 118.)

[See *In re Klaus*, 67 Wis. 401.]

**Trusts, Pools and Conspiracies.****To fix prices, etc., forbidden.**

§ 1791j. Corporations organized under the laws of this State are prohibited from entering into any combination, conspiracy, trust, pool, agreement or contract, intended to restrain or prevent competition in the supply or price of any article or commodity in the general use of this State, or constituting a subject of trade or commerce therein, or to control the price of any such article or commodity, to regulate or fix the price thereof, to limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this State, or to fix any standard or figure by which its price to the public shall be in any manner controlled or established. (1897, ch. 357, § 1.)

**Duty of attorney-general.**

§ 1791k. Whenever the attorney-general shall be notified, or shall have reason to believe that any such corporation has violated any provision of section 1791j, it shall be his duty forthwith to address to any such corporation, or to any director or officer thereof such inquiries as he may deem necessary for the purpose of determining whether or not such corporation has violated any provision of said section, and it shall be the duty of such corporation, director or officer so addressed, to promptly and fully answer in writing, under oath, such inquiries; and in case such corporation, director or officer thereof, shall fail or neglect to do so within sixty days from the receipt of such inquiries, unless such time is extended in writing by the attorney-general, it shall be his duty to proceed against such corporation as provided in the next section. (1897, ch. 357, § 2.)

Trusts; real property, etc.—R. S., §§ 1791l, 1791m, 2021, 2200, 2215.

### Ouster.

§ 1791l. In case of the failure or neglect of any such corporation or of any director or officer thereof to answer such inquiries as hereinbefore provided, such failure or neglect is hereby declared to be a forfeiture of the charter of such corporation, and it is hereby made the duty of the attorney-general, on leave granted by the supreme court upon cause shown, to bring an action for the purpose of vacating the charter and annulling the existence of such corporation. (1897, ch. 357, § 3.)

### No privilege from self-accusation.

§ 1791m. No person shall be excused from answering any of the inquiries herein provided for, nor from attending and testifying, nor from producing any books, papers, contracts, agreements or documents, in obedience to a subpoena issued by any lawful authority in case or proceeding, based upon or growing out of any alleged violation of any of the provisions of section 1791j, or of any law of this State in regard to trusts, monopolies or illegal combinations on the ground of or for the reason that the answer, testimony, evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may answer, testify or produce evidence, documentary or otherwise, in obedience to any request under these provisions, or any subpoena, or either of them, in any case or proceeding, except that the charter of any corporation may be vacated and its corporate existence annulled as hereinbefore provided, and except further, that no person testifying in any case or proceeding aforesaid, shall be exempt from prosecution and punishment for perjury committed in so testifying.

(Approved April 27, 1897.)

### CHAPTER XCIV.

#### Banks and Banking.

Sec. 2021. Corporations not to engage in banking business without authority.

§ 2021. No corporation, without being authorized by law, shall be in any manner concerned in receiving deposits, making discounts, or issuing notes or other evidences of debts to be loaned or put in circulation as money; and no person or association of persons or corporation shall issue any bills or promissory notes or other evidences of debt, for the purpose of loaning them or putting them in circulation as money, unless thereto especially authorized by law; and every director, agent, officer or member of a corporation and every person who shall vio-

late any provision of this section shall forfeit one thousand dollars. (R. S. 1858, ch. 46, §§ 1, 2.)

See Const., art. XI, §§ 1, 4, 5.

### PART II.

#### The Acquisition and Transmission of Property.

##### TITLE XX. REAL PROPERTY.

###### CHAPTER XCIX.

###### General Provisions.

Sec. 2200a. Limitation on holding of real estate by corporations.

§ 2200a. 1. It shall be unlawful for any alien not a resident of this State or of some State or territory of the United States, or of the District of Columbia, or for any corporation not created by or under the laws of the United States, or of some State or territory thereof to hereafter acquire, hold or own more than three hundred and twenty acres of land in this State or any interest therein except such as may be acquired by devise, inheritance or in good faith in the course of justice in the collection of debts by due process of law.

No corporation or association more than twenty per cent. of the stock of which is or may be owned by any person, corporation or association who are such non-resident aliens, shall hereafter acquire, hold or own more than said quantity of land in this State or any interest in a greater quantity of land herein, except such as may be acquired in good faith in the collection of debts by judicial proceedings.

All lands acquired, held or owned in violation of the provisions hereof, shall be forfeited to the State, and it shall be the duty of the attorney-general to enforce every such forfeiture. (1887, ch. 479.)

See § 1748 (6), cross-references.

[Restrictions imposed upon amount of property that a corporation may hold cannot be taken advantage of collaterally by private persons, but only in a direct proceeding by the State which created it. *Smith v. Sheeley*, 12 Wall. 358; *Jones v. Habersham*, 107 U. S. 174, 178; s. c., 2 Sup. Ct. Rep. 336.]

### CHAPTER C.

#### Alienation by deed.

Sec. 2215. What may be a seal.

2216. Witnesses, execution by corporation; acknowledgments.

#### What may be a seal.

§ 2215. A scroll or device as a seal upon any conveyance of lands or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto or impressed

## Conveyances; place of trial — R. S., §§ 2216, 2619.

thereon and the conveyance or instrument be of the same obligation as if actually sealed; but this section shall not apply to such official or corporate seals as are or may be provided by law. All deeds and other instruments in writing executed by any person, or private corporation not having a corporate seal, and now required to be under seal, shall be deemed in all respects to be sealed instruments, and shall be received in evidence as such, provided, the word "seal," the letters "L. S." or a scroll or other device intended to represent a seal, are added in the place where the seal should be affixed. A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under any seal, shall be deemed to have been executed under the corporate seal, whether the words or marks herein mentioned be affixed or not.

## Witnesses; executions by corporation; acknowledgments.

§ 2216. All conveyances executed within this State of lands or any interest in lands therein shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such. And when such conveyances are of lands or any interest therein owned by a corporation organized under any law of this State they shall be signed by the president or other authorized officers of the corporation, sealed with the corporate seal, if any, otherwise as provided in section 2215, and countersigned by the secretary or clerk thereof; and all corporate conveyances so executed prior to the taking effect of these statutes shall be valid. The persons executing any such conveyance may acknowledge the execution thereof before any judge or clerk of a court of record, court commissioner, county clerk, register of deeds, notary public, justice of peace, police justice or United States court commissioner residing within this State, who shall file with the clerk of the circuit court of the county in which he resides his certificate of appointment as such commissioner, or a copy thereof certified by the clerk of the court which appointed him. The officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof and the true date of making the same under his hand.

See § 1748 (6), cross-references.

[A deed of land by a corporation, to be valid, must, under above section, be signed by its president, or other authorized officer, sealed with its seal, and countersigned by its secretary or clerk.

Galloway v. Hamilton, 68 Wis. 651; s. c., 32 N. W. Rep. 636.

A subsequent ratification of a deed of corporate land executed only by the president, cannot affect the lien of an intervening judgment creditor of the corporation. Galloway v. Hamilton, 68 Wis. 651; s. c., 32 N. W. Rep. 636.

A deed of corporate land executed without authority by president, on the eve of insolvency, not followed by change of possession before levy of an execution by a creditor, will not confer an equitable title as against such creditor, though there had been previous negotiations about the purchase and the purchase money was paid. Galloway v. Hamilton, 68 Wis. 651; s. c., 32 N. W. Rep. 636.

Where a mortgage given by a corporation to secure payment of its note was executed by its officers who owned nearly all the corporate stock, the corporation and such officers were estopped from settling up ultra vires. Witter v. F. M. Co., 78 Wis. 543; s. c., 47 N. W. Rep. 729.]

## PART III.

## Actions and Proceedings in Civil Matters.

## TITLE XXV. CIVIL ACTIONS IN COURTS OF RECORD.

Ch. 119. Place of trial.

- 120. Manner of commencing actions.
- 124. Of attachment.
- 126. Of injunctions and of receivers.

## CHAPTER CXIX.

## Place of Trial.

Sec. 2619. Place of trial in actions against corporations.

§ 2619. The proper place of trial of civil actions is as follows, respectively:

\* \* \* \* \*

Fourth. Of an action against any railroad corporation, as defined by section 1861, except appeals in condemnation proceedings either in the county in which the cause of action arose or in that in which the plaintiff resides, if the road of such corporation extends into either such county; if such road does not extend into either such county the action may be commenced in any county into which the road of such corporation does extend.

Fifth. Of an action against any other corporation, existing under the law of this State, or county in which it is situated or has its principal office or place of business, or in which the cause of action or some part thereof arose. (R. S. 1878, § 2619, as amended by revisers of 1898.)

See § 1748 (2), cross-references.

["Cause of action," as used in subdivision 5, seems to be synonymous with "right of action," and includes the acts or omissions without which there would be no cause of action or right to recover. Bruil v. Northwestern Assn., 72 Wis. 430; s. c., 39 N. W. Rep. 529.

The joinder of causes of action properly triable in different counties is ground for demurral. Hackett v. Carter, 38 Wis. 394.

When defendant corporation has absolute right to have place of trial changed to county in which said corporation is located. Maher v. Lumber Co., 86 Wis. 530; s. c., 57 N. W. Rep. 357.]

Service of summons; verification — R. S., §§ 2637, 2666.

### CHAPTER CXX.

#### Manner of Commencing Actions.

**Sec. 2637.** Actions against corporations; how commenced.

**2666.** Form of verification.

§ 2637. Actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons and the accompanying complaint or notice aforesaid, shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof, as follows:

\* \* \* \* \* \* \* \* \*  
6. If against a railroad corporation whose general office is within this State, to the president, secretary, superintendent, general manager, or general solicitor thereof, if either shall reside and be within the county in which such action is brought; and in case neither of the officers named reside and are in such county, then to any station, freight or ticket agent thereof who shall reside and be within such county.

7. If against a railroad corporation, whose general office is or all whose aforesaid officers shall reside or be without the State, to any station, freight, ticket or other agent thereof within the State, or to the person mentioned in section 1857a.

8. If against a corporation owning or operating sleeping or hotel cars, or the like, which has not its general office in the State, to any person having charge of any of its cars or any agent found within the State.

10. If against any other corporation organized under the laws of this State, to the president, or other such chief officer, vice-president, secretary, cashier, treasurer, director or managing agent thereof, or in the manner provided in section 1775b, in the cases therein provided for.

13. If against any other foreign corporation, to any such officer being within the State, or to any agent having charge of or conducting any business therefor in this State, or any trustee or assignee of such corporation, or upon the secretary of State, as provided in section 1770b. But such service can be made upon a foreign corporation only, either when it has property within the State or the cause of action arose therein, or the cause of action exists in favor of a resident of the State, and upon the secretary of State only when the cause of action arises out of business transacted in this State or when the defendant has property therein. (Amended by revisers of 1898.)

See § 1748 (2), cross-references. Actions in justice's court, service on corporation. § 3601.

[The term "managing agent" is construed to mean an agent having a general supervision of the affairs of the corporation. *Transp. Co. v. Whittaker*, 16 Wis. 220. The captain of a steamboat belonging to a foreign corporation is not such a managing agent. *Transp. Co. v. Whittaker*, 16 Wis. 220.

But a person exercising a general supervision over the business of a bank, and who closed up its affairs, was held to be a managing agent, although he made affidavit that he was not such. *Carr v. Bank*, 19 Wis. 272.

"Principal officer" is one whose oversight or agency extends either over the whole or some particular department of the general business of the corporation as a president, who has ordinarily a general oversight over its entire business, a secretary over its records, or a treasurer over its moneys. *F. L. & T. Co. v. Warring*, 20 Wis. 290.

Service upon officer not within the statute is ineffectual. *Alexandria v. Fairfax*, 95 U. S. 774.

A service cannot be made upon an officer not named by title of his office. *Alexandria v. Fairfax*, 95 U. S. 774; *Knowlton v. Watertown*, 130 id. 327; s. c., 9 Sup. Ct. Rep. 539, 542.

In an action brought against a corporation within subdivision 11, it is not necessary that the existence of some of the facts enumerated should be alleged in the petition to give jurisdiction. *Friezen v. Ins. Co.*, 30 Fed. Rep. 349.

Where, in violation of section 1750, principal office and books of a domestic corporation are kept outside of the State, and its principal managing officer actually resides in another State, one having the supervision of affairs of the corporation in the State will be held to be its "managing agent," upon whom process may be served within meaning of subdivision 10, section 2637. *Wickham v. South Shore Co.*, 89 Wis. 23; s. c., 61 N. W. Rep. 287.

Persons held to be general agents upon whom summons might be served, of an Illinois corporation, under subdivision 11. *Burgess v. Aultman*, 80 Wis. 292; s. c., 59 N. W. Rep. 175.

A resident of this State cannot maintain garnishment herein against a foreign insurance company by serving its agent here on account of a loss of his debtor's goods in another State, where the debtor resided, though the principal defendant appeared in the action. *Morawetz v. Sun Ins. Offt. e. 94 Wis. 175; s. c., 71 N. W. Rep. 100.*

The agent of a combination of several railway companies is not an agent of either of them separately, so that service in an action against one of them can be made upon him. *Kingsley v. Great Northern Ry. Co.*, 91 Wis. 380.

The provisions of subdivisions 6 and 7 must be followed to give the court jurisdiction. *Kernan v. North. Pac. Ry. Co.*, 79 N. W. Rep. 403.]

#### Form of verification.

§ 2666. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true, and must be by the affidavit of the party, or if there be several parties united in interest and pleading together, by one, at least, of such parties acquainted with the facts, if such party be within the county where the attorney resides and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if the action or defense be founded upon a written instrument in his possession or if all the material allegations of the pleadings be within his personal knowledge or belief. When the pleading is verified by any other person than the party he shall set forth in the affidavit his knowledge or the grounds of his belief on the subject, and the reason why it is not made by the party, and if made on knowledge shall state that the pleading is true to his knowledge, and if on his belief that he believes it to be true. When a corporation is a party the verification may be made by any officer thereof; and when

Attachment; injunction — R. S. §§ 2731, 2736, 2738, 2780, 2787.

the State or any officer thereof in its behalf is a party the verification may be made by any person acquainted with the facts.

## CHAPTER CXXIV.

### Of Attachment.

**Sec. 2731.** Affidavit for attachment, requisites of. 2736. Service of writ of attachment on foreign corporation.

2738. Attachment of shares of stock.

§ 2731. Before any writ of attachment shall be executed the plaintiff or some one in his behalf, shall make and annex thereto an affidavit stating that the defendant named in such writ is indebted to the plaintiff in a sum exceeding fifty dollars, and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract, express or implied, or upon judgment or decree, and containing a further statement that the deponent knows, or has good reason to believe, either:

\* \* \* \* \*  
6. That the defendant is a foreign corporation; or if created under the laws of this State, that all the proper officers thereof on whom a service of summons do not exist, are non-residents of the State, or cannot be found;

\* \* \* \* \*  
Or, an affidavit stating that a cause of action sounding in tort exists in favor of the plaintiff and against the defendant named in such writ, that the damages sustained and claimed exceed the sum of fifty dollars, specifying the amount claimed, and the further statement, \* \* \*.

2. That the defendant is a foreign corporation. (Part of § 2731, R. S. 1878, amended by revisers of 1898.)

See § 1748 (2), cross-references.

[Stating indebtedness to be a specified sum, "as near as deponent can now estimate the same," is insufficient. *Lathrop v. Snyder*, 16 Wis. 582. As is also "as near as the plaintiff is able to determine." *Hawes v. Clement*, 64 id. 152; s. c., 25 N. W. Rep. 21. But an averment that it is a certain sum, "as near as may be," is good. *Mairret v. Marriner*, 33 Wis. 582.]

§ 2736. The officer having the writ of attachment shall execute the same without delay, etc. \* \* \* In case of a non-resident or a foreign corporation, the sheriff shall serve such copies on any agent of such defendant in the county, if any be known to him. \* \* \* (R. S. 1858, ch. 130, §. 9, as amended 1859, ch. 101.)

§ 2738. \* \* \* Rights or shares in the stock or property of any association or corporation, with the interests and profits thereon, and other personal property shall be attached in the same manner in which an execution may be levied on the same, and the provisions respecting the levy of an execution thereon shall be applicable to the

execution of an attachment. Personal property shall be bound by the writ of attachment from the time the same is attached thereby. (R. S. 1858, ch. 130, §§ 12, 17; 1859, ch. 101; amended by revisers of 1898.)

Stock is personal property. § 1751.

[Property in hands of a duly appointed and qualified receiver is not subject to attachment, although he may not have reduced it to actual possession. *Hagedon v. Bank*, 1 Pin. 61.]

## CHAPTER CXXVI.

### Of Injunctions and Receivers.

**Sec. 2780.** Injunction to suspend business, not to be granted.

2787. Receiver may be appointed; when.

2787a. Duties of receivers.

§ 2780. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or presiding judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation except where the State is a party to the proceedings, unless the plaintiff give a written undertaking, executed by two sufficient sureties, to be approved by the court or judge, to the effect that the plaintiff will pay all damages not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct. (R. S. 1858, ch. 129, § 7.)

See § 1748 (2), cross-references.

[An injunction to restrain stockholder from voting upon corporate stock at an election of directors is not forbidden. *Reed v. Jones*, 6 Wis. 680.]

§ 2787. A receiver may be appointed:

\* \* \* \* \*  
4. In cases provided by any statute, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

5. In such cases as are now provided by law, or may be in accordance with the existing practice except as otherwise provided in this chapter. (R. S. 1858, ch. 129, § 13.)

Insolvent corporation may surrender its rights. § 1763. May be enjoined. § 3218. Appointment of receiver. § 3246.

[Where property of a corporation is being mismanaged, and is in danger of being lost to the stockholders and creditors through collusion and fraud by its officers and directors, a receiver may be appointed under subdivision 5 of above section. *Haywood v. Lumber Co.*, 64 Wis. 639; s. c., 26 N. W. Rep. 184.]

In an action of account against an insolvent corporation by a judgment creditor, a receiver may be appointed. *Adler v. Milwaukee Co.*, 13 Wis. 57.

In an action by a stockholder against a corporation and its officers and directors for an accounting, appointment of a receiver, etc., a complaint alleging that such officers and directors have

## Actions against corporations — R. S., §§ 3204, 3205.

**fraudulently diverted the property and profits of the corporation to their own personal use and benefit by voting themselves salaries and other fraudulent acts, is sufficient without alleging a demand upon such officers and directors for the correction of the abuse, since it is apparent that such a demand would be nugatory.** *Eschweiler v. Stowell*, 78 Wis. 316; s. c., 47 N. W. Rep. 361.

A creditor at large of a corporation, whose remedy at law has not been exhausted, cannot maintain an action in equity for appointment of a receiver. *Hinckley v. Pfister*, 83 Wis. 64; s. c., 53 N. W. Rep. 21. Neither a stockholder as such nor a corporation itself can maintain an action in equity for purpose of winding up the business of the corporation. *Id.*

Supreme Court has power to grant stay of execution of an order appointing a receiver of a corporation. *Janesville v. Water Co.*, 89 Wis. 159; s. c., 61 N. W. Rep. 770.]

§ 2787a. Whenever a receiver shall be appointed by any court to manage, conduct, settle, adjust or close up any mercantile, manufacturing or other business such receiver shall immediately report to the court the amount due the employees and laborers in such business; and said court shall order its receiver to pay out of the first receipts of said business, after the payment of costs, debts due the United States or this State taxes and assessments and the current expenses of carrying on or closing said business, the wages of such employes and laborers which accrued within three months immediately prior to his appointment. (1885, ch. 48, § 1; amended by revisers of 1898.)

**TITLE XXVII. ACTIONS AND PROCEEDINGS IN SPECIAL CASES.****CHAPTER CXL.****Of Actions and Proceedings by and against Corporations and Companies.****Sec. 3204. How commenced.**

- 3205. Allegations as to incorporation.
- 3206. Waiver of mistake as to corporate name.
- 3207. Foreign corporation may sue and defend; exception.
- 3208. Action against foreign corporation which has ceased to act.
- 3209. Extent of plaintiff's lien.
- 3216. Sequestration of stock and appointment of receiver.
- 3217. Property; how distributed.
- 3218. Insolvent corporations may be enjoined.
- 3219. Injunction; when issued; and receiver; when appointed.
- 3220. Suits against banks; how prosecuted.
- 3221. Who may be made parties defendant.
- 3222. Officers, etc., may be made defendants after judgment.
- 3223. Corporations may be a defendant in action against stockholders.
- 3224. Proceedings therein.
- 3225. Distribution of property.
- 3226. Payments; when stockholders to make.
- 3227. Suits by other creditors restrained and they made parties.
- 3228. Discovery may be compelled.
- 3236. In action by State, injunctions may issue.
- 3237. Jurisdiction of Circuit Court over corporate officers.
- 3238. Visitation powers.
- 3239. Jurisdiction; how exercised.
- 3240. Action to vacate or annul charter.
- 3241. By whom brought.
- 3242. Who may act if attorney-general refuses.
- 3243. Notice to parties.
- 3244. Summons; how served.

- Sec. 3245. Judgment; how rendered and what to provide.
- 3246. Appointment of receiver.
- 3247. Application of preceding sections.
- 3248. Costs; how paid.
- 3249. Judgment-roll; where to be filed.
- 3250. Provisions not exclusive.

**How commenced.**

§ 3204. Actions and proceedings by or against corporations, may be commenced in the same manner that personal actions and proceedings are commenced by or against natural persons, and the proceedings in such actions shall be the same as in actions by natural persons. (R. S. 1858, ch. 148, parts of §§ 1, 2.)

Corporations may sue and be sued. § 1748 (2), and notes.

[Under above section an action may be commenced by attachment in a justice's court against a domestic corporation, as well as against a natural person. *Ruthe v. R. R. Co.*, 37 Wis. 345. Foreign corporations are liable to garnishment in this State, where they own property here, or the cause of action, in respect to them arose here. *Brauser v. Ins. Co.*, 21 Wis. 506.]

**Actions for conspiracy.**

A corporation may be held liable as a party to a conspiracy to defraud in a transaction outside of its charter, and a complaint charging it and its coconspirators is not defective for want of allegations as to who acted for the corporation. *Zinc Carbonate Co. v. First Nat. Bank*, 79 N. W. Rep. 229.]

**Allegations as to incorporation.**

§ 3205. In an action by or against a corporation, the complaint must aver that the plaintiff or defendant, as the case may be, is a corporation. If it was incorporated under any law of this State that fact must be averred; if it was not so incorporated, an averment that it is a foreign corporation is sufficient. The complaint need not set forth or specially refer to any act or proceeding by or under which, the corporation was made. (R. S. 1858, ch. 148, part of § 4.)

[In an affidavit for garnishee process against "The New England Insurance Company," it was held that the name implied the corporation. *Brauser v. Ins. Co.*, 21 Wis. 506. The complaint in a suit brought in a corporate name need not aver plaintiff to be a corporation. *Bank v. Knowlton*, 12 Wis. 624; *Chickermong Lodge v. McDonald*, 16 id. 113; *F. L. & T. Co. v. Fisher*, 17 id. 114. In case of foreign corporation, it is sufficient to plead the act of incorporation by reciting its title, with averments as to legislative authority by which it was enacted. *Ins. Co. v. Cross*, 18 Wis. 109. Such corporation is not required, any more than a domestic one, to prove its corporate existence, unless such existence is specifically denied in the answer. *M. & R. Co. v. Smith*, 33 Wis. 530. (Foregoing decisions were under former statutes.)

This section probably applicable to private corporations only. *Smith v. Janesville*, 52 Wis. 680; s. c., 9 N. W. Rep. 789.

If the name of a corporation be changed it must sue and be sued in respect to its prior rights or liabilities by its new name. *Dousman v. Milwaukee*, 1 Pln. 81.

Denial by a corporation of an averment that it was incorporated in a certain manner is bad on demurrer. *Brown v. Gas Co.*, 21 Wis. 51.

A defendant who pleads a counterclaim in an action by a corporation is estopped to deny plain-

Foreign corporations; insolvency — R. S., §§ 3206-3209, 3216.

tiff's corporate existence. *Imp. Co. v. Holway*, 85 Wis. 344; s. c., 55 N. W. Rep. 418.]

#### Waiver of mistake as to corporate name.

§ 3206. In actions or proceedings by or against any corporation, a mistake in the naming of such corporation shall be stated in the defendant's verified answer, together with the true name of such corporation; otherwise such mistake shall be deemed to have been waived. (R. S. 1858, ch. 148, § 5.)

#### Foreign corporation may sue and defend; exception.

§ 3207. A corporation created by or under the laws of any other State or country, or of the United States, may prosecute or defend an action or proceeding in the courts of this State in the same manner as corporations created under the laws of this State, except as otherwise specially prescribed by law. But such foreign corporation cannot maintain an action founded upon an act or upon any liability or obligation, express or implied, arising out of, or made, or entered into, in consideration of any act which the laws of this State forbid a corporation or any association of individuals to do, without express authority of law. (R. S. 1858, ch. 148, §§ 11, 12.)

Foreign corporation must appoint attorney for process. § 1750a. And must file statement with secretary of State. § 1770a. Action against, when it has ceased to act. § 3208.

[In absence of voluntary appearance, courts may acquire jurisdiction of a foreign corporation only in manner pointed out by statute. But a general appearance by such a corporation gives jurisdiction to render personal judgment against it. *Congar v. R. R. Co.*, 17 Wis. 477.]

A general demurral does not raise question whether plaintiff corporation was authorized to do a certain act. *F. L. & T. Co. v. Fisher*, 17 Wis. 114.

Foreign corporations may transact in this State any business authorized by their charters and not inconsistent with the laws and policy of the State; and contracts arising out of such transactions will be enforced in courts of this State at suit of such corporations. *Ins. Co. v. Cross*, 18 Wis. 109.

A corporation created by one State has no power to do any corporate act in another State, except by the express or implied consent of the latter, and upon such terms as it may prescribe. *Morse v. Ins. Co.*, 30 Wis. 496.]

#### Action against foreign corporation which has ceased to act.

§ 3208. An action for the recovery of money may be commenced and prosecuted to judgment against a corporation created by or under the laws of any other State or country or of the United States, although such corporation may have ceased from any cause whatever to act in whole or in part as a corporation in the same manner as though it had not so ceased to act; and satisfaction of the judgment may be enforced out of any property in this State which such corporation owns or has any interest in, or would own or have an interest in had the same not ceased to act as aforesaid, whether held

or controlled by such corporation or by a trustee, assignee, agent or other person, for the use and benefit in whole or in part of such corporation or the creditors thereof or both; and any attachment issued in such action may be executed on any such property. (R. S. 1858, ch. 148, §§ 6, 8.)

See § 3207, cross-references, and § 3209.

[Under Act of 1854, providing for prosecution of suits against foreign corporations which had ceased to act as such, certificates of indebtedness issued by such corporations are admissible in evidence under the common money counts. *Bank v. Corwith*, 6 Wis. 551.

Proceedings in a New York court dissolving a corporation of that State, and enjoining creditors from bringing actions against it, given full force in this State by comity. *Gilman v. Ketcham*, 84 Wis. 60; s. c., 54 N. W. Rep. 395.]

#### Extent of plaintiff's lien.

§ 3209. The plaintiff in such action shall, to the extent of the final judgment therein, have a lien upon all such property and interests aforesaid from the time of the filing of the complaint in such action, unless such corporation shall file with the clerk an undertaking, in double the amount claimed to be due to the plaintiff, executed by two or more sureties in its behalf resident freeholders of this State, to the effect that the corporation will satisfy the final judgment that may be recovered in favor of such plaintiff in such action within sixty days from the rendition thereof. Such undertaking shall be of no effect unless accompanied by the affidavit of the sureties as provided in section 3065, and such sureties upon being excepted to must justify in like manner as there directed. (R. S. 1858, ch. 148, § 7.)

See § 3208.

#### Proceedings Against Insolvent Corporations.

##### Sequestration of stock and appointment of receiver.

§ 3216. Whenever a judgment shall be obtained against any corporation incorporated under the laws of this State and an execution issued thereon shall have been returned unsatisfied in whole or in part, upon the petition of or by an action commenced by the person obtaining such judgment or his representatives, the circuit court within the proper county may sequester the stock, property, things in action and effects of such corporation, and may appoint a receiver of the same. (R. S. 1858, ch. 148, § 18.)

Appointment of receiver. § 2787.

The capital stock is a trust fund for payment of corporate debts. *Adler v. Milwaukee, etc. Co.*, 13 Wis. 57; *Nazro v. Ins. Co.*, 14 Id. 295. And after return of execution against a corporation unsatisfied, a creditor's bill may be maintained by the judgment creditor in behalf of himself and such other creditors as may elect to become parties, to compel taking account of corporate assets and debts and appointment of receiver. As against stockholders, such action may be maintained independent of statute, even where a creditor's bill has been abolished. *Adler v. Milwaukee, etc. Co.*, 13 Wis. 57.

## Proceedings against insolvent corporations — R. S., §§ 3217-3219.

In an action under above section against an insolvent corporation, the complaint is good although, in addition to the necessary averments, it alleges a previous voluntary assignment of all corporate property for benefit of creditors, it being further alleged that such assignment was made with fraudulent intent. Powers v. Paper Co., 60 Wis. 23; s. c., 18 N. W. Rep. 20.

Averments in complaint that defendant is a member and shareholder of a joint-stock company is not an averment that said company is a corporation. Bank v. Goff, 31 Wis. 77.

In an action under sections 3216-3228 (other than those named in section 3218), where it is not sought to hold officers or stockholders personally liable under section 3221, the court has power only to sequester property, appoint receiver, and compel the corporation to account. Clark v. Printing Co., 50 Wis. 416; s. c., 7 N. W. Rep. 309.

As to the general scope of the two preceding sections, see Pierce v. Milwaukee Cons. Co., 38 Wis. 253.

Under sections 3216-3228, an attachment creditor of a corporation whose execution has been returned unsatisfied, may maintain action to sequester the property, and have a receiver appointed, in order that there may be a fair and equal division of the corporate assets among all its creditors; and in such action all other creditors may be enjoined from pursuing their own remedies, and officers of the law may be compelled to deliver to the receiver all corporate property held by them on attachment or execution. Whether such an action could be maintained without the statute, not determined. Ballin v. Bank, 78 Wis. 404; s. c., 47 N. W. Rep. 516.

Creditor whose judgment was obtained in a Federal court in this State is entitled to his statutory remedy, such a judgment standing upon same footing as judgment of a superior State court. Ballin v. Bank, 78 Wis. 404; s. c., 47 N. W. Rep. 516.

Above section applies only to corporations "incorporated under the laws of this State." Iron Co. v. Trust Co., 90 Wis. 570; s. c., 63 N. W. Rep. 752; 64 id. 323.

In an action by creditors to sequester the property of an insolvent corporation, complaint must allege what. Ballin v. Bank, 89 Wis. 278; s. c., 61 N. W. Rep. 1118.

Assets of an insolvent corporation are not a trust fund, for benefit of creditors, when. Id.]

**Property, how distributed.**

§ 3217. In the final order in any such action, the court shall direct a just and fair distribution of the property of such corporation and of the proceeds thereof to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in section 3245. (R. S. 1858, ch. 148, § 19.)

[Moneys in hands of sheriff made upon executions against an insolvent corporation are subject to sequestration as a part of corporate assets when they are fruit of fraudulent combination between the directors and the execution creditor for purpose of giving the latter a legal preference over other creditors. Ford v. Bank, 87 Wis. 363; s. c., 58 N. W. Rep. 766. An insolvent corporation cannot prefer a creditor. Id.]

**Insolvent corporation may be enjoined.**

§ 3218. Whenever any corporation having banking powers, or having the power to make loans or pledges or deposits, or authorized by law to make insurance, shall become insolvent or unable to pay its debts or shall neglect or refuse to pay its notes or evidences of debts on demand or shall have violated any of the provisions of its act of incorporation or of any other law binding on such corporation, any court having juris-

diction may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation until such court shall otherwise order. (R. S. 1858, ch. 148, § 21.)

See § 3219.

[If any stockholder or creditor of a corporation, such as is described in above section, is aggrieved by a proceeding against such corporation, he may file his complaint and procure an injunction under said section, and proceed to a final settlement of the affairs of the corporation. Bank v. Bank, 18 Wis. 490.

A judgment creditor of a bank may maintain an action in behalf of himself and all other creditors who may choose to become parties thereto, against the bank jointly with the stockholders, to reach and appropriate its assets, and enforce the liability of the stockholders. Bank v. Chandler, 19 Wis. 434.

Under above section, the appointment of a receiver and issuance of an injunction restraining the corporation from doing any corporate act is such "different provision." Ins. Co. v. Sentinel Co., 81 Wis. 207; s. c., 51 N. W. Rep. 440.

An injunction under above section, restraining an insolvent insurance company from exercising any of its corporate rights, privileges or franchises, restrains the prosecution by it of an action for libel commenced before the issuance of such injunction. Ins. Co. v. Sentinel Co., 81 Wis. 207; s. c., 51 N. W. Rep. 440.

The insolvency of a corporation and the appointment of a receiver for it do not, ipso facto, operate as a dissolution, and therefore afford no ground for the dismissal of an appeal taken in its name. Stolze v. Manitowoc Terminal Co., 100 Wis. 208; s. c., 75 N. W. Rep. 897.

An action under this and the succeeding sections in which the complaint does not allege that it is brought on behalf of all the creditors, but prays that they may be required to become parties, is the exclusive action in which all creditors must seek their remedy, and in which not only the assets of the bank are to be administered, but also the liabilities of officers and stockholders are to be ascertained and enforced. Gager v. Bank of Edgerton, 101 Wis. 533.]

**Injunction; when issued; and receiver, when appointed.**

§ 3219. Such injunction may be issued upon the commencement of an action for the purpose of closing up the business of such corporation by the attorney-general in the name of the State or by any creditor or stockholder of such corporation, or at any time thereafter upon proof of the facts required to authorize the issuing of the same. The court may in any stage of such action appoint one or more receivers to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due and the property that may belong to such corporation, who shall in all respects possess the powers and authority conferred and be subject to all the obligations imposed upon receivers in other cases, and in all respects be subject to the control of the court. (R. S. 1858, ch. 148, §§ 23, 24.)

See §§ 3218, 3236.

## Actions against corporations; parties — R. S., §§ 3220-3224.

[A creditor of an insolvent corporation may bring action under sections 3218-3226 on behalf of all creditors, for purpose of closing up its business, to enforce the liabilities of its officers, directors and stockholders, including not only liability specially created by statute but also the liabilities arising out of law for misappropriation and embezzlement of funds, for negligence in permitting the same, and the liability to repay the dividends unlawfully declared and received, and it is immaterial that plaintiff was not a creditor of the corporation when such unlawful dividends were declared. *Hurlbut v. Marshall*, 62 Wis. 590; s. c., 22 N. W. Rep. 852.

Under two foregoing sections, creditor or stockholder of an insurance corporation may maintain action to restrain the exercise of its corporate rights, etc., for the appointment of a receiver, and to close up its business. *In re Ins. Co.*, 77 Wis. 366; s. c., 46 N. W. Rep. 441.

Fact that the dissolution of a corporation is prayed for in such action does not impair jurisdiction to grant the relief authorized by said sections. *In re Ins. Co.*, 77 Wis. 366; s. c., 46 N. W. Rep. 441. Such an action having been commenced and an injunction granted and a receiver appointed, an application by the attorney-general for an order that the corporation show cause why its business should not be closed and a receiver appointed was properly denied. *Id.*

A receiver's appointment cannot be attacked collaterally in an action brought by him after he has qualified, where the court appointing him had jurisdiction of the subject-matter, notwithstanding the application for his appointment was insufficient. *Davis v. Shearer*, 90 Wis. 250. See *Seamans v. Miller's Ins. Co.*, 90 Wis. 490.]

## Suits against banks, how prosecuted.

§ 3220. Whenever such injunction shall issue against a bank for any violation of its charter on the application of any creditor the court shall proceed to final judgment in such case and adjudge a forfeiture, if the proof be sufficient, notwithstanding such creditor may settle with such corporation; and in all such cases the attorney-general, under the direction of the governor or any creditor, shall have the right to appear and prosecute such action; and such action shall not be discontinued if either of them so appear and prosecute such action to final judgment. (R. S. 1858, ch. 148, part of § 22.)

Actions to vacate charter. §§ 3240-3250. See § 3221.

## Who may be made parties defendant.

§ 3221. If such action be commenced by a creditor of any corporation whose directors, trustees or other officers or stockholders are made liable by law for the payment of such debt, in any event or contingency, such directors, trustees or other officers or stockholders or any of them may be made parties to the action, either at the commencement thereof or in any subsequent stage of the proceedings, whenever it shall become necessary to enforce such liability. (R. S. 1858, ch. 148, § 25, amended.)

See § 3220.

If practicable, all stockholders must be made parties. *Adler v. Brick Co.*, 13 Wis. 57. The action should be against the corporation and all stockholders, unless some sufficient reason for admitting any of them be shown. *Coleman v. White*, 14 Wis. 700.

Under above section, a creditor of a bank, existing under laws of this State, may, without having obtained a judgment at law against it, maintain an action (in behalf of himself and of other creditors who may choose to become parties) against the bank jointly with its stockholders, to obtain the relief provided for by sections 3218, 3219, 3225 and 3226. *Cleveland v. Bank*, 17 Wis. 545.

See *Clarke v. Printing Co.*, 50 Wis. 416; s. c., 7 N. W. Rep. 309.]

## Officers, etc., may be made defendants after judgment.

§ 3222. If any creditor of such corporation desires to make such directors, trustees, or other officers or stockholders, parties to the action after a judgment therein against the corporation, he may do so by filing a supplemental complaint against them founded upon such judgment; and if such judgment was rendered in an action instituted by the attorney-general, such creditor may on his own application be made plaintiff therein, and may in like manner make the directors, trustees or other officers or stockholders sought to be charged, defendants in such action. (R. S. 1858, ch. 148, § 26.)

[Above section merely extends remedy to such creditors as may choose to proceed to judgment against the corporation before resorting to the equitable proceeding provided by the statute. *Cleveland v. Bank*, 17 Wis. 545.]

## Corporation may be a defendant in action against stockholders.

§ 3223. Whenever any creditor of any corporation shall seek to charge the directors, trustees or other officers or stockholders thereof, on account of any liability created by law, he may commence and maintain an action for that purpose in the circuit court, and may at his election join the corporation in such action. (R. S. 1858, ch. 148, § 27.)

Stockholders' liability. §§ 1755, 1756, 1769. Corporation may be sued. § 1748 (2).

[Above section relates to corporations of all kinds, whether moneyed or otherwise. *Sleeper v. Goodwin*, 67 Wis. 577, 588; s. c., 31 N. W. Rep. 335.]

## Proceedings therein.

§ 3224. The court shall proceed therein as in other cases, and when necessary shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers, who shall possess all the powers conferred and be subject to all the obligations imposed on receivers by the provisions of section 3219; but if, upon the filing of the answer or upon the taking of such account, it shall appear that the corporation is insolvent, and that it has no property or effects to satisfy such creditor, the court may proceed without appointing any receiver to ascertain the respective liabilities of such directors, trustees or other officers and stockholders, and enforce the same by its judgment as in other cases. (R. S. 1858, ch. 148, §§ 28, 29.)

## Payments by stockholders; discovery; injunction — R. S., §§ 3225-3228, 3236.

[See *Sleeper v. Goodwin*, 67 Wis. 577, 590; s. c., 31 N. W. Rep. 335.]

It is not necessary that the corporate assets be fully exhausted before creditors can proceed to judgment against the stockholders. The court must so administer the affairs of the corporation as to satisfy its liabilities out of its assets so far as practicable, and upon it appearing that the stockholders' liability must be resorted to, enforce the same by judgment. *Booth v. Dear*, 96 Wis. 516; s. c., 71 N. W. Rep. 916.]

**Distribution of property.**

§ 3225. Upon a final judgment being rendered in any action to restrain a corporation or against the directors, trustees, officers, or stockholders, the court shall cause just and fair distribution of the property of such corporation and of the proceeds thereof, to be made among its creditors, in the order prescribed in section 3245. (R. S. 1858, ch. 148, § 30.)

[Taxes should only be paid pursuant to order of the court; but if the payment must necessarily be made the court will not disallow it because the receiver made it without authority. *Hammaker v. Commercial Bank*, 95 Wis. 359; s. c., 79 N. W. Rep. 295.]

**Payments, when stockholders to make.**

§ 3226. In all cases in which the directors or other officers of a corporation or the stockholders thereof, shall have been made parties to an action in which judgment shall be rendered, if the property of such corporation shall be insufficient to discharge its debts the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the corporation. If the debts of the corporation or any part thereof shall still remain unsatisfied the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and adjudge the amount payable by each, and enforce the judgment as in other cases. (R. S. 1858, ch. 148, §§ 31, 32.)

See § 1755, cross-references.

**Suits by other creditors restrained and they made parties.**

§ 3227. Whenever any action shall be commenced against any corporation, its directors, trustees or other officers or its stockholders, according to the provisions of this chapter, the court may, by injunction, on the application of either party and at any stage of the proceedings, restrain all proceedings by any other creditor against the defendant in such action; and whenever it shall appear necessary or proper, may order notice to be published in such manner as the court shall direct requiring all the creditors of such corporation to exhibit their claims and become parties to the action within a reasonable time not less than six months from the first publication of such order, and in default thereof to be precluded from all benefit of the judgment which shall be made in

such action and from any distribution which shall be made under such judgment. (R. S. 1858, ch. 148, § 37.)

[If objection is not made that one foreign corporation proceeding under this section against another such corporation which is insolvent and has property in this State has an adequate remedy at law, the fact that the plaintiff had no lien or real property by lien or otherwise will not prevent the court's jurisdiction from attaching nor render its orders void. *State v. Circuit Court*, 73 N. W. Rep. 788.]

**Discovery may be compelled.**

§ 3228. In every such action, the court may compel such corporation to discover any stock, property, things in action or effects, alleged to belong to or to have belonged to it, the transfer and disposition thereof and the consideration and all the circumstances of such disposition. Every officer, agent or stockholder of such corporation and every person to whom it shall be alleged that any transfer of property or effects of such corporation has been made, or in whose possession or control the same is alleged to be, may be compelled, in the discretion of the court, to testify in relation thereto and to answer any questions touching the transfer or possession of such property or effects, although such answer may expose the corporation of which he is a member, to a forfeiture of its corporate rights or any of them, or such witness to a prosecution for a criminal fraud; but such answers shall not be used as evidence upon any information, indictment or other criminal prosecution or proceeding against him. (R. S. 1858, ch. 148, § 37.)

[The power conferred upon a court, in respect to any person to whom it is alleged that any transfer of property of an insolvent corporation has been made, is merely to compel such person "to testify in relation thereto." *Clarke v. Printing Co.*, 50 Wis. 416; s. c., 7 N. W. Rep. 309.]

**Supervisory Power over Corporations.****In action by State, injunction may issue.**

§ 3236. In an action for that purpose commenced by the attorney-general in the name of the State in any circuit court against a corporation, such court may restrain such corporation by injunction from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by its charter; and in the same manner may restrain any individuals from exercising any corporate rights, privileges or franchises not granted to them by any law of this State; and such court, pending such action, may issue such injunction and continue the same until final judgment shall have been rendered therein. (R. S. 1858, ch. 148, §§ 13, 14.)

See § 3219.

[Where one or more have obtained, through fraud, possession of corporation, and presumed to exercise its functions, and are possessed of its franchise, the court will entertain bill filed by

## Jurisdiction of circuit court — R. S., §§ 3237-3241.

parties aggrieved, as a matter of private right; and where such possession has been acquired by means of a judicial process fraudulently used, and after acquirement of the franchise, by means thereof, it is abandoned, a bill filed by the aggrieved parties will be entertained to annul all that had been accomplished by the improper use of the process of the court, and the parties will be placed in *statu quo*. *Putman v. Sweet*, 2 Pn. 302. In such proceeding the corporation should be made a party. *Id.*

Courts of equity have jurisdiction, upon the information of the attorney-general, to restrain corporations from excess or abuse of corporate franchises. *Atty.-Gen. v. Ry. Co.*, 35 Wis. 428.

Above section neither confers nor limits jurisdiction of the Supreme Court. *Atty.-Gen. v. Ry. Co.*, 35 Wis. 428.

The attorney-general cannot sue in a matter affecting private rights and interests only. *Atty.-Gen. v. Academy*, 52 Wis. 469; *s. c.*, 9 N. W. Rep. 391.]

## Jurisdiction of circuit court over corporate officers.

§ 3237. The circuit court shall have jurisdiction over directors, managers, trustees and other officers of corporation:

1. To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge.

2. To order and compel payment by them to the corporation whom they represent and to its creditors of all sums of money and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted by any violation of their duties as such directors, managers, trustees or other officers.

3. To suspend any such director, trustee or other officer from exercising his office whenever it shall appear that he has abused his trust.

4. To remove any such director, trustee or officer from his office upon proof or conviction of gross misconduct.

5. To direct if necessary new elections to be held by the body or board duly authorized for that purpose to supply any vacancy created by such removal.

6. In case there be no such body or board or all the members of such board be removed, then to report the same to the governor, who shall be authorized to fill such vacancies.

7. To set aside all alienations of property made by the directors, trustees or other officers of any corporation contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation, knew the purposes for which it was made; and

8. To restrain and prevent any such alienation in cases where it may be threatened or there may be good reason to apprehend that it is intended to be made. (R. S. 1858 ch. 148, § 15.)

See § 1748 (4), cross-references, and § 1776. Jurisdiction conferred, exercised by whom. § 3239.

[A corporation having conveyed all its property to a new corporation, to defeat its creditors, and

then permitted one of its directors to withdraw certain of the assets, held, that the creditors were entitled to relief, under above section. *South Bend, etc., Co. v. Cribb Co.*, 72 N. W. Rep. 749.]

Directors of a corporation, independent of any statute on the subject, are liable for corporate property misappropriated or lost through their culpable negligence or fraud, and under this section and section 3239, any creditor of such corporation can maintain an action in equity against such directors to enforce such liability. *Gores v. Day*, 99 Wis. 276; *s. c.*, 74 N. W. Rep. 787.]

## Visitorial powers.

§ 3238. When any visitorial powers over any corporation are or shall be vested by statute in any corporate body or public officer, the provisions of the preceding section shall not be construed to divest or impair the powers so vested; nor shall the visitorial powers of such body or officer be exclusive unless expressly so declared. (R. S. 1858, ch. 148, § 16.)

## Jurisdiction, how exercised.

§ 3239. The jurisdiction conferred by section 3237 shall be exercised in an action prosecuted by the attorney-general in the name of the State, or by any creditor of such corporation, or by any director, trustee or officer thereof having a general superintendence of its concerns, as the case may require, or as the court may direct. (R. S. 1858, ch. 148, § 17.)

## Proceedings to Annul Corporations.

## Action to annul or vacate charter.

§ 3240. An action may be brought by the attorney-general in the name of the State, whenever the legislature shall direct, against a corporation created by or under the laws of this State for the purpose of vacating or annulling the act of incorporation or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated or by some of them, or with their knowledge and consent. (R. S. 1858, ch. 160, § 3.)

Corporation may sue and be sued. § 1748 (2), cross-references. Action to annul charter of bank. § 3220.

[The remedy to set aside a franchise irregularly or fraudulently granted, where the party to whom it has been granted is in the exercise of the privileges it confers, is by *quo warranto* or *scire facias*, at the suit of the State, and not by an equitable action at the suit of private parties. *Stedman v. Berlin*, 97 Wis. 505; *s. c.*, 73 N. W. Rep. 57.]

## By whom brought.

§ 3241. An action may be brought by the attorney-general, or by any private party, in the name of the State, on leave granted therefor by the supreme court upon cause shown, for the purpose of vacating the charter or annulling the existence of any corporation created by or under the laws of

Annulment, etc.; judgment — R. S., §§ 3242–3245.

this State, except a municipal corporation, whenever such corporation shall:

1. Offend against any of the provisions of any law by or under which it shall have been created, altered or renewed; or

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; or

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges or franchises; or

5. Whenever it shall exercise franchises or privileges not conferred upon it by law. (R. S. 1858, ch. 160, part of § 4; 1874, ch. 283, § 1.)

**Surrender of corporate rights.** § 1763. Voluntary dissolution. § 1789.

[The records and residence of principal officers of private corporations created by this State must be within the State, so far as needful to give effect to the statutes thereof; and continued neglect of such duty will be cause of forfeiture. State v. Ry. Co., 45 Wis. 579.

Railroad company discontinuing its road where charter required it to be maintained is a cause of forfeiture under subdivisions 1 and 2 of foregoing section. Atty.-Gen. v. Ry. Co., 36 Wis. 466.

Action may be brought under above section to vacate charter of a street railway, when. Atty.-Gen. v. Ry. Co., 72 Wis. 612; s. c., 40 N. W. Rep. 487.

It is a serious question if a private person can bring an action under this section. State v. International Investment Co., 88 Wis. 512, 520; s. c., 60 N. W. Rep. 796; Supreme Ct. of Foresters v. Supreme Ct. of Foresters, 94 Wis. 234, 240; s. c., 68 N. W. Rep. 1011.

#### Grant of leave is discretionary.

To obtain leave it must be shown that there has been a clear and willful misuse, abuse or non-use of the franchise, or violation of law, whereby the corporation has failed to serve the purpose of its organization. State v. Janesville Water Co., 92 Wis. 493; s. c., 66 N. W. Rep. 512.

#### Who may act if attorney-general refuses.

§ 3242. Whenever the attorney-general shall have reason to believe that any of the acts or omissions specified in the preceding section can be established by proof he shall apply for leave, and upon leave granted, bring such action in every case of public interest and in every other case in which satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby. In case the attorney-general on application shall refuse to bring such action leave to bring the same by a private party shall be granted only on notice to the attorney-general and the proposed defendant; and the court on granting leave in such case may require the prosecutor to give adequate security to the State to indemnify it and the defendant against all taxable costs therein. (R. S. 1858, ch. 160, § 4; 1874, ch. 283, § 1.)

#### Notice to parties.

§ 3243. Upon an application by the attorney-general to bring any such action the court may in its discretion direct notice of such application to be given to the officers of the corporation previous to the hearing, and may hear the corporation in opposition thereto. (R. S. 1858, ch. 160, § 5.)

#### Summons, how served.

§ 3244. Whenever an action shall be brought by the attorney-general in the name of the State for the purpose of vacating the charter or annulling the existence of a corporation the summons shall be served personally upon some officer of such corporation, if to be found within the State. If any sheriff to whom any such summons shall be delivered for service shall make return thereon that no officer of such corporation can after due diligence be found within the State, the attorney-general shall cause a copy of such summons to be published in the official State paper once in each week for four successive weeks; and upon filing proof of such publication with the clerk of the court the service of the summons shall be deemed complete, and the court shall proceed as though personal service had been made on such corporation. (1875, ch. 329, § 1; 1862, ch. 46, § 1.)

#### Judgment, how rendered and what to provide.

§ 3245. If in any such action it shall be adjudged that a corporation has forfeited its corporate rights, privileges and franchises judgment shall be rendered that such corporation be excluded from such corporate rights, privileges and franchises and be dissolved; and thereupon the affairs of such corporation shall be wound up by and under the direction of a receiver, to be appointed by the court, and its property sold and converted into money; and the proceeds, after paying the costs and expenses, shall be distributed in the following order:

1. For the payment of taxes and debts due the United States, the State of Wisconsin and any county, city, town or village therein.

2. For the payment of the legal and equitable liens upon the property of such corporation, in the order of their priority.

3. For the payment of the other just debts of the corporation.

4. The residue of such moneys, if any, shall be distributed among the stockholders thereof.

When any corporation shall be adjudged to have exercised a franchise or privilege not conferred on it by law the court may, in its discretion, instead of rendering a judgment as above provided in this section, render a judgment that such corporation be excluded from exercising such franchise or privilege and that the plaintiff recover

Receiver; costs; actions in justices' court — R. S., §§ 3246-3250, 3601, 4181.

costs, and may also in either case, in its discretion, fine such corporation in a sum not exceeding two thousand dollars, to be collected and paid into the State treasury. (R. S. 1858, ch. 160, §§ 15-18; 1856, ch. 120, §§ 345-348; 1862, ch. 46, § 3; 1875, ch. 329, § 2.)

#### Appointment of receiver.

§ 3246. If such action be pending in the circuit court, such receiver shall be appointed in and by the judgment of dissolution or by subsequent order founded thereon. If it shall be pending in the supreme court, then, upon the entry of such judgment of dissolution, the attorney-general shall forthwith commence an action in the proper circuit court for the appointment of such receiver and the winding up of the affairs of such corporation; and such corporation shall, notwithstanding such judgment of dissolution, be deemed to exist until a receiver shall be appointed, qualified and duly invested with the property of such corporation, but shall not be able to do any act or thing other than to make over and transfer its assets to such receiver. (1875, ch. 329, § 3.)

Appointment of receiver. § 2787, and note.

#### Application of preceding sections.

§ 3247. The provisions of the two preceding sections, so far as they relate to the distribution of the property of the corporation and actions to appoint receivers therefore, shall apply to any corporation whose charter shall be repealed by act of the legislature, or otherwise annulled thereby. (1875, ch. 329, § 4.)

#### Costs, how paid.

§ 3248. The necessary costs and disbursements, incurred in bringing and prosecuting such action by the attorney-general, in the name of the State shall, when certified to by him, be audited by the secretary of State, and paid out of the State treasury. The receiver in any such action, or the attorney-general in case such moneys shall be delivered to him by such receiver, shall repay to the State treasurer any moneys advanced by the State on account of such costs and disbursements. (1862, ch. 46, § 4.)

#### Judgment-roll, where to be filed.

§ 3249. Upon the rendition of such judgment against a corporation, or for vacating or annulling of letters patent, the attorney-general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State. (1856, ch. 120, § 349; R. S. 1858, ch. 160, § 19.)

#### Provisions not exclusive.

§ 3250. No special directions in these statutes to the attorney-general or any other public officer, concerning corporations, not

contained in this chapter, shall be deemed exclusive nor shall anything in this chapter be deemed to repeal any other remedies given by these statutes to or against corporations, their officers, stockholders or creditors. (New in R. S. 1878.)

### TITLE XXVIII. CIVIL CASES IN COURTS OF JUSTICES OF THE PEACE.

#### CHAPTER CLV.

##### Of the Commencement of Actions.

Sec. 3601. Service on corporations.

§ 3601. Actions in justice's court against municipal or other corporation shall be commenced by summons, except where otherwise provided by law, which shall be served by leaving a copy thereof with any officer or officers, agent or person, upon whom the summons in an action commenced in the circuit court against such corporation, is required by law to be served, at least six days before the return day thereof, except that in an action against a railroad or express corporation, in addition to the officers above referred to, it may be served upon any agent of the corporation who has charge of an express office or a depot or station on the line of the railroad owned or occupied by the defendant; and upon perfecting such service, and a legal return thereof being made, it shall be held to have the same effect as a personal service upon a natural person, and like proceedings may be had in such action as in cases against such persons. (R. S. 1858, ch. 120, §§ 18, 20; 1870, ch. 34; 1871, ch. 71; 1872, ch. 119, part of § 42.)

##### Service of summons on corporations. § 2637.

[Provisions of this chapter regulate service of summons in actions in justice's court against corporations. F. L. & T. Co. v. Warring, 20 Wis. 290. Summons against railroad company may be served on any station agent as well in a suit on contract for labor and services as any other. Ruthe v. R. R. Co., 37 Wis. 344.]

### TITLE XXX. PROCEEDINGS IN ALL COURTS.

Chap. 176. Of evidence.

177. Of limitations of time for commencement of actions.

#### CHAPTER CLXXVI.

##### Of Evidence.

Sec. 4181. Charters, patents, etc., as evidence.  
4181a. Proof of posting or service of notice.  
4199. Existence of corporation presumed.

§ 4181. Any charter or patent of incorporation which shall have been issued by the governor or secretary of State, or both, to any corporation, under any law of the State; any certificate of organization or association of any corporation or joint-stock company; the articles of association or organization of any corporation, or a

## Limitation of actions; crimes of officers — R. S., §§ 4252, 4418.

certified copy thereof, which shall have been filed or recorded in the office of the secretary of State, or of any register of deeds or clerk of the circuit court under any law of the State; any certificate or resolution for the purpose of amendment, and every amendment in any form, of the charter, patent, certificate or articles of association or organization, or of the name, corporate powers or purposes of any corporation, filed or recorded in either of said offices; and a duly certified copy of any such document so filed or recorded, shall be received as conclusive evidence of the existence of the corporation or joint-stock company mentioned therein, or of the due amendment of the charter, patent, certificate or articles of association or organization thereof, in all cases where such facts are only collaterally involved; and as presumptive evidence thereof and of the facts therein stated in all other cases. (New in revision of 1878.)

§ 4181a. Whenever the articles of organization or by-laws of any corporation require or authorize any notice to be given, posted or served, an affidavit of the person who gave, posted or served the same, specifying the manner and time of doing so, annexed to a copy of such notice, may be filed with the clerk or secretary of the corporation to whose affairs such notice relates, and when so filed, the original or copies thereof, duly certified by the officers in whose custody the same may be, shall be presumptive evidence in all cases and in every court or judicial proceeding of the facts contained in such affidavit.

§ 4199. In actions by or against any corporation it shall not be necessary to prove on the trial the existence of such corporation unless the defendant by his answer, duly verified, shall have specifically denied that the plaintiff or defendant, as the case may be, is a corporation. (R. S. 1858, ch. 148, § 3.)

See § 1748 (2), and note.

[Corporate character must be specifically denied. Mfg. Co. v. Morse, 49 Wis. 368; s. c., 5 N. W. Rep. 815.]

## CHAPTER CLXXVII.

## Of Limitations of Actions.

Sec. 4252. What actions not affected.

§ 4252. This chapter shall not affect actions against directors or stockholders of a moneyed corporation or banking association to recover a forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery by the aggrieved party of the facts upon which the forfeiture attached, or the liability was created. (R. S. 1858, ch. 738, § 36.)

Liability of stockholders. §§ 1755, 1756, 1769.

## Part IV. Crimes and the Punishment Thereof; Proceedings in Criminal Cases.

## TITLE XXXII. CRIMES AND THE PUNISHMENTS THEREOF.

## CHAPTER CLXXXII.

## Of Offenses against Property.

Sec. 4418. Crimes by officers, carriers, agents, attorneys, etc.

- 4419. Evidence.
- 4435. Frauds by officers of corporations.
- 4436. False certificates of stock.
- 4466a. Injury to business; restraint of will.
- 4466b. Blacklisting and coercing employees.
- 4466c. Preventing pursuit of work.

## Crimes by officers, carriers, agents, attorneys, etc.

§ 4418. Any officer, agent, clerk, employe or servant of this State or of any county, town, school district, city, village or other municipal corporation therein, or of any banking, railroad, insurance or telegraph company or other corporation, or of any joint-stock company or association, or in the service or employment thereof, who, by virtue of such office or employment, shall have the possession or custody of, or shall be intrusted with the safe keeping, disbursement, investment or payment of any money or funds or with the safe keeping, sale, carrying or delivering of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to or under the care or control of the State, or such municipal or other corporation, or in which the State or such corporation has an interest, or any factor, carrier, warehouseman, storage, forwarding or commission merchant, or any bailee, executor, administrator, guardian, or any trustee, agent, clerk, attorney, messenger, employe or servant of any private person, corporation, copartnership or association, except apprentices and other persons under the age of sixteen years, who, by virtue of his business or employment, shall have the care, custody or possession of or shall be intrusted with the safe keeping, disbursement, investment or payment of any money, or shall have the care, custody or possession of or shall be intrusted with the safe keeping, carrying, sale or delivery of any goods, wares, merchandise, produce, lumber, or any other property or anything which is the subject of larceny, belonging to such other person, corporation, copartnership or association, shall embezzle or fraudulently convert to his own use or to the use of any other person except the owner thereof, or shall take, carry away or secrete, with intent to convert to his own use or to the use of any other person except the owner thereof, any such money, fund, goods, wares, merchandise, produce, lumber or any other property or thing, shall be punished, if the money or property so embezzled shall exceed the value of one hundred dollars, by imprisonment in the State prison

Crimes by officers; false certificates of stock — R. S., §§ 4419, 4435, 4436, 4466a.

not more than five years nor less than one year, and if the money or property so embezzled shall not exceed the value of one hundred dollars and shall exceed the value of twenty dollars, by imprisonment in the State prison or county jail not more than one year nor less than six months, or by fine not exceeding two hundred dollars, and if the money or property so embezzled shall not exceed the value of twenty dollars, by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars. Any person who is a member of any copartnership or one of two or more beneficial owners of any property specified in this section, or of any property or thing which is the subject of larceny, who shall embezzle or fraudulently convey to his own use or to the use of any other person, except the other members of such copartnership or the other beneficial owners of such property or thing, or who shall take, carry away, or secrete with intent to convert to his own use or to the use of any other person except as aforesaid, any such property or thing shall be punished as provided in this section, the same as if he had not been or was not a member of such copartnership or one of such beneficial owners. The offense of embezzlement may be prosecuted and punished in any county in which the person charged had possession of the property or thing alleged to have been embezzled. (Amended by revisers of 1898.)

#### Evidence.

§ 4419. The refusal or wilful neglect of any officer or other person named in the last preceding section to pay over any moneys or to deliver any property in his care, custody or possession, by virtue of his office or employment upon the demand thereof by the proper person, copartnership, corporation or authority entitled to receive the same, or as required by law, or the selling, mortgaging or pledging, of any such property, or the loaning or depositing of any such moneys, by such officer or other person, for his own gain, profit or advantage without special authority, shall in each case be prima facie evidence of the embezzlement thereof; and every public officer shall promptly pay over, as required by law, the same moneys received and held by him by virtue of his office and the whole thereof, and he shall not be allowed to set up or plead and account or claim for his services or fees as an offset or counterclaim against such payment. (Amended by revisers of 1898.)

#### Frauds by officers of corporations.

§ 4435. Any director, officer or manager of any body corporate or public company, who shall as such receive or possess himself of any money or other property of such body corporate or public company, otherwise than in payment to him of a just debt or demand, or who shall, with intent

to defraud, omit to make or to cause to be made a full and true entry thereof, in the books or accounts of such body corporate or public company, or who shall, with intent to defraud, destroy, alter, mutilate, or falsify any of the books, papers, writings or securities, belonging to such body corporate or public company, or shall make or concur in making any false entry, or any material omission in any book of records, accounts or other document of such body corporate or public company; or who shall make, circulate, or publish or concur in making, circulating or publishing any written or printed statement or account which he shall know to be false in any particular, with intent to deceive or defraud any member, shareholder or creditor, of any such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to, or to enter into any security for the benefit of such body corporate or public company, and any person who shall receive any money, chattel or valuable security, which has been fraudulently obtained or disposed of as aforesaid, knowing the same to have been so fraudulently obtained or disposed of, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars. (1858, ch. 111, §§ 4-9.)

#### False certificates of stock.

§ 4436. Any president, cashier, treasurer, secretary or other officer, or any agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign, with intent to issue, sell, or pledge, or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any certificate or other evidence of such ownership or transfer, the signing, issuing, selling or pledging of which, by such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation or by resolution of the board of directors or trustees, or by some amendment thereof, shall be punished by imprisonment in the State prison not more than ten years nor less than one year, or by fine not exceeding five thousand dollars. (R. S. 1858, ch. 169, § 28.)

See § 1751, and note.

#### Injury to business; restraint of will.

§ 4466a. Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully or maliciously injuring another in his reputation, trade, business, or profession by any means whatever, or for the

Blacklisting; indictment — R. S., §§ 4466b, 4466c, 4734, 4735, 4971.

purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars. (1887, ch. 287.)

#### **Blacklisting and coercion of employees.**

§ 4466b. Any two or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employee by threats, promises, circulating blacklists or causing the same to be circulated, or who shall, after having discharged any employee, prevent or attempt to prevent such employee from obtaining employment with any other person, copartnership, company or corporation by the means aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employee or any employee who has voluntarily left the service of his employer, or circulate a blacklist of such employee, to prevent his obtaining employment under any other employer, or who shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by fine of not more than five hundred dollars nor less than one hundred dollars, which fine shall be paid into the State treasury for the benefit of the school fund. Nothing in this section shall prohibit any employer of labor from giving any other such employer, to whom a discharged employee has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for such discharge, when requested so to do by such employee, the person to whom he has applied for employment; or any bondsman or surety; but it shall be a violation of this section to give such information with intent to blacklist, hinder or prevent such employee from obtaining employment; neither shall anything herein contained prohibit any employer of labor from keeping for his own information and protection, a record showing the habits, character and competency of his employees and the cause of the discharge or voluntary quitting of any of them. (1887, ch. 349; 1895, ch. 248.)

#### **Preventing pursuit of work.**

§ 4466c. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage-worker, or who shall attempt to so hinder or prevent shall be punished by a fine not exceeding one hundred dollars or

by imprisonment in the county jail not more than six months, or by both fine and imprisonment, in the discretion of the court. (1887, ch. 427, § 1.)

#### **TITLE XXXIII. PROCEEDINGS IN CRIMINAL CASES.**

##### **CHAPTER CXCIII.**

###### **Of Judgments in Criminal Cases and the Execution Thereof.**

Sec. 4734. Service of Indictment on corporation.  
4735. Collection of judgment.

§ 4734. Whenever any corporation, private or municipal, [which] shall have been indicted or informed against under the common law, or under any statute of this State, shall fail to appear after notice of such indictment or information, given and served by leaving a true copy of such indictment or information, with the officers or persons upon whom a summons in a civil action against such corporation may be served, and twenty days shall have elapsed thereafter, the default of such corporation may be recorded, and the charges in such indictment or information shall be taken as true and judgment shall be rendered accordingly. (1868, ch. 167, §§ 1, 2; 1871, ch. 108, §§ 1, 2.)

See § 1748 (2), cross-references.

§ 4735. Whenever judgment shall be rendered against any corporation by default, as aforesaid, or upon a verdict, the same shall be collected in the same manner as judgments in civil actions against like corporations. (Id.)

#### **Part V. The Construction of the Statutes.**

##### **CHAPTER CCIV.**

###### **Construction.**

Sec. 4971. "Person" includes corporations.

§ 4971. In the construction of the statutes of this State, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature; that is to say:

12. The word "person" may extend and be applied to bodies politic, and corporate, as well as to individuals.

[There is no statute or rule of construction by which the term "bodies politic and corporate," or "corporations," or other like terms, must necessarily extend to individuals. *Tewksbury v. Schulerberg*, 41 Wis. 584.

The words "any person" in statute providing punishment for bribery, include any corporation. *Chippewa, etc., Co. v. St. P.*, 75 Wis. 224; s. c., 44 N. W. Rep. 17.

A foreign corporation is a "person" within meaning of the statute of Limitations. *Larson v. Aultman & Taylor Co.*, 86 Wis. 281; s. c., 56 N. W. Rep. 915.]

Hours of labor; payment of wages — R. S., §§ 1728, 1728a, 1729, 1729a.

## PROVISIONS RELATING TO LABOR.

### R. S. 1898, Chap. 83.

#### **Of Hours of Labor and Employment of Children, and Boards of Arbitration.**

**Sec. 1728.** Hours of labor for women and children.  
**1728a.** Employment of children.  
**1729.** Eight hours a day's work, when.  
**1729a.** When wages payable; evidence of.

#### **The State Board of Arbitration and Conciliation.**

**1729b.** Appointment; vacancies; oath.  
**1729c.** Duty of board.  
**1729d.** Arbitration; procedure; witnesses; books.  
**1729e.** Effect of decision; notice.  
**1729f.** Duty of mayor, board, etc.  
**1729g.** Witness fees.  
**1729h.** Expenses and compensation.  
**1729i.** Report.

#### **Local Boards of Arbitration.**

**1729j.** Submission to arbitration; decision; compensation.

#### **Hours of labor for women and children.**

§ 1728. In all manufactories, workshops, or other places used for mechanical or manufacturing purposes the time of labor of children under the age of eighteen years and of women employed therein shall not exceed eight hours in one day; and any employer, stockholder, director, officer, overseer, clerk or foreman who shall compel any woman or any such child to labor exceeding eight hours in any one day, or who shall permit any child under fourteen years of age to labor more than ten hours in any one day in any such place, if he shall have control over such child sufficient to prevent it, or who shall employ at manual labor any child under twelve years of age in any factory or workshop where more than three persons are employed, or who shall employ any child of twelve and under fourteen years of age in any such factory or workshop for more than seven months in any one year shall be punished by fine not less than five nor more than fifty dollars for each such offense. (1867, ch. 83, § 1; 1877, ch. 289; 1878, ch. 187; 1883, ch. 135.)

See ch. 774, L. 1899, post.

#### **Employment of children.**

§ 1728a. No child under fourteen years of age shall be employed at labor or service in any mine, factory, workshop or place of public entertainment or amusement except upon permit as hereinafter provided; but nothing herein shall interfere with or prohibit the employment of such child in the service of its parents outside of school hours.

The county judge of the county wherein any child resides may, by order entered of record, grant a permit and deliver a copy thereof under seal to any child over twelve years of age exempting such child from the operation of this section as to employment. Every such permit shall specify the conditions and the time during which such child may be employed and fix such limitations as to said judge shall seem proper; and in determining whether such permit shall be granted the judge shall consider the moral and physical condition of the child, his state of education, the necessities of the family to which such child belongs and such other circumstances as, in the discretion of the judge, ought to affect the question of exemption. No charge or fee shall be required in any matter under this section; provided, that where such child resides at a distance of more than ten miles from the county seat the power to grant permits herein conferred upon the county judge may, under the same limitations and with the same conditions, be exercised by the mayor of the city or the president of the village in which or nearest to which said child or its parent resides. Any person, company, firm or corporation that employs or permits to be employed at work any child in violation of the foregoing provisions and any parent or other person having the control of any such child who permits such employment shall be punished by a fine of not less than ten dollars nor more than fifty dollars. (1889, ch. 519, §§ 9-13, and part of 1891, ch. 109.)

See ch. 274, L. 1899, post.

#### **Eight hours a day's work, when.**

§ 1729. In all engagements to labor in any manufacturing or mechanical business, where there is no express contract to the contrary, a day's work shall consist of eight hours and all engagements to contract for labor in such cases shall be so construed; but this shall not apply to any contract for labor by the week, month or year. (1867, ch. 83, § 2.)

#### **When wages payable; evidence of.**

§ 1729a. All wages or compensation for labor or service, unless there shall be a written contract to the contrary, shall be paid weekly or bi-weekly in cash; provided, that this section shall not apply to agricultural laborers, commercial travelers, persons employed on commission, traveling employees of railway or express companies, persons employed in logging camps or in driving, running or manufacturing logs or lumber, nor to

State board of arbitration, etc.—R. S., §§ 1729b-1729e.

any person whose occupation is such as to render him inaccessible on the regular pay day. Whenever any person engaged in the lumbering or building or in the manufacture of lumber shall defer the payment of all or any part of the wages due employes after the same become due, such employers shall, on demand, give his employes written evidence of indebtedness for the amount so due them, which shall be payable at a date agreed upon and be assignable. Any such employer who shall refuse to give such evidence of indebtedness for money earned shall forfeit not more than fifty dollars. (1889, ch. 474; 1891, ch. 430.)

#### **State Board of Arbitration and Conciliation.**

##### **Appointment; vacancies; oath.**

§ 1729b. The State board of arbitration and conciliation as heretofore established is recognized and continued. On the expiration of the terms of the two members thereof appointed by the governor, or sooner if a vacancy shall otherwise occur, the governor shall appoint one member of such board, who shall be an employer of labor or be selected from some association representing employers of labor; the other shall be selected from the members of some labor organization and shall not be an employer of labor. The terms of such members shall be for two years unless they are sooner removed by the governor. Vacancies shall be filed for the unexpired term. The third member of said board shall be appointed by the governor upon the recommendation of those previously appointed; provided, that if such recommendation is not made to the governor within thirty days after their appointment he may appoint any person such third member. Each member shall, before entering upon the duties of his office, take the oath prescribed by the constitution; such oath shall be filed in the executive office. Said board shall organize by choosing one member as chairman and another as secretary, and shall adopt rules of procedure and submit them to the governor and attorney-general, which rules shall be in force on approval thereof by them. All requests and communications intended for said board may be addressed to the governor at Madison, who shall at once refer the same to the board for their action. (1895, ch. 364, §§ 1, 2; 1897, ch. 258.)

##### **Duty of board.**

§ 1729c. Whenever any controversy or difference, not the subject of litigation, exists between an employer, whether an individual, copartnership or corporation, and his employes, if at the time he employs not less than twenty-five persons in the same general line of business in any one place, said board may, without any application therefor or upon application, and as soon as prac-

ticable thereafter, visit the locality where the controversy exists and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, should be done or submitted to by either or both to adjust the same and make a written decision thereof. Such decision shall at once be made public by publication in two or more newspapers published in the locality where such controversy exists, shall be recorded upon books of record to be kept by the secretary of said board, and a succinct statement thereof published in the report hereinafter provided for, and said board shall cause a copy of such decision to be filed with the clerk of the city, village or town where said business is carried on. (1895, ch. 364, § 3; 1897, ch. 258.)

##### **Arbitration; procedure; witnesses; books.**

§ 1729d. Said application shall be signed by such employer or by a majority of his employes in the department of the business in which the controversy exists, or by their duly authorized agent, or by both parties, and shall contain a concise statement of the grievances complained of, and an agreement to continue in business or at work without any lockout or strike until the decision of said board is made known; provided, that said board shall render its decision within thirty days after the date of filing such application. As soon as may be after the receipt of said application the secretary of said board shall cause public notice to be given of the time and place for the hearing thereof; but such notice need not be given when both parties to the controversy join in the application and request in writing that it be not given. When notice has been given or dispensed with as aforesaid the board may in its discretion appoint two expert assistants, one to be nominated by each of the parties to the controversy, and such additional expert assistants as they may deem necessary. Such assistants shall be sworn to the faithful discharge of their duty. Should the petitioner or petitioners fail to perform the agreement made in said application the board shall proceed no further thereupon without the written consent of the adverse party. The board shall have the power to subpoena as witnesses any operative in the departments of business affected by the controversy and any person who keeps the record of wages earned in such departments, to examine them under oath and require the production of books containing the record of wages paid. Subpoenas may be signed and oaths administered by any member of the board. (1895, ch. 364, § 4.)

##### **Effect of decision; notice.**

§ 1729e. The decision of said board shall be binding upon the parties who join in the application therefor for six months after

## State and local boards of arbitration — R. S., §§ 1720f-1729j.

the same is filed with the proper city, village or town clerk or until either party has given the other notice in writing of his intention not to be bound thereby from and after the expiration of sixty days from the date thereof. Said notice may be given by serving it upon the employer or his representative, and upon the employees by posting it in three conspicuous places in the shop, factory, yard or upon the premises where they work. (1895, ch. 364, § 6; amended by revisers of 1898.)

**Duty of mayor, board, etc.**

§ 1729f. Whenever any mayor, board of village trustees or town board shall believe that a strike or lockout is seriously threatened or has actually occurred, or that it threatens to or does involve the business interests of the city, village or town represented by said mayor, trustees or board, such mayor, trustees or board shall at once notify the secretary of the State board of arbitration and conciliation of the fact and furnish him with such information as may be available; and it shall be the duty of the State board to investigate the condition there prevailing as soon as may be, and endeavor by mediation to effect an amicable settlement between the employer and employees directly concerned in such strike or lockout, and to endeavor to persuade them to submit the matters in controversy to the local board of arbitration and conciliation, as hereinafter provided for, or to the State board; but the latter may, if it deems it advisable, investigate the cause or causes of such controversy, ascertain which of the parties is mainly or wholly responsible for the existence or continuance thereof and may make and publish a report stating its conclusions in the premises. (1895, ch. 364, §§ 8, 9.)

**Witness fees.**

§ 1729g. Witnesses subpoenaed by the State board shall be allowed for their attendance and travel the same fees as are paid witnesses in the circuit courts; each such witness shall certify under oath in writing the amount of his travel and the length of time of his attendance; and upon the approval of such statement by the board and the presentation thereof to the secretary of State a warrant shall be drawn in his favor therefor. (1895, ch. 364, § 10; amended by revisers of 1898.)

**Expenses and compensation.**

§ 1729h. The members of said board shall be reimbursed the actual and necessary expenses incurred in the performance of their duties and be paid five dollars per day for each and every day actually and necessarily occupied therein, accounts for which, properly verified, shall be audited by the secretary of State. (1895, ch. 364, § 11.)

**Report.**

§ 1729i. The State board shall, at the close of every biennial fiscal term, make a report to the governor, which shall contain a succinct statement of the decisions made by them during the preceding two years, and such recommendations as they may deem proper; such report shall be printed to the number of two thousand copies in the style other official reports are printed and be distributed in the same way. (1895, ch. 364, § 5; amended by revisers of 1898.)

**Local Boards of Arbitration.****Submission to arbitration; decision; compensation.**

§ 1729j. The parties to any controversy within the provisions of section 1729e may submit the same, by an instrument in writing, for the adjustment to a local board of arbitration and conciliation, which may either be mutually agreed upon or the employer may designate one of such arbitrators, the employees of their duly authorized agent another, and the two so designated may choose a third, who shall be chairman thereof; such board shall in respect to the matters referred to it have and exercise all the powers which the State board might have and exercise, and its decision shall have such binding effect as may be agreed upon by the parties to the controversy in the submission. The jurisdiction of such local board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the State board. Such local board shall render its decision in writing within ten days after the close of any hearing held by it and file a copy thereof with the secretary of the State board. Each member of the local board shall be entitled to receive from the treasurer of the city, village or town in which the controversy or difference that is the subject of arbitration exists, if such payment is approved in writing by the mayor, the board of trustees or the town board, three dollars for each day of actual service, not exceeding ten days for any one arbitration. (1895, ch. 364, § 7.)

**Chap. 77, L. 1899.**

AN ACT requiring employers of females in any manufacturing, mechanical or mercantile establishment to furnish seats for the use of such females when not on active duty. (Approved March 30, 1899.)

**Section 1.** Every person or corporation employing females in any manufacturing, mechanical or mercantile establishment in the State of Wisconsin shall provide suitable seats for the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

**§ 2.** Any person or corporation who shall violate the provisions of this act shall, upon

## Wages; employment of minors — L. 1899, chs. 221, 224, 274.

conviction thereof, be considered guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars, nor more than thirty dollars for each and every offense.

§ 3. This act shall take effect and be in force from and after its passage and publication.

## Chap. 221, L. 1899.

AN ACT regulating the payment of wages in time checks or other paper than legal money. (Approved April 20, 1899.)

Section 1. All corporations or individuals paying wages in time checks or other than legal money, shall make such time checks or paper payable in some designated place of business in the county in which the work was performed or at the office of such corporation or individual if within the State of Wisconsin, or at any bank within said State.

§ 2. Any corporation or individual failing to comply with the terms of the above section shall upon conviction thereof be fined not to exceed one hundred dollars nor less than ten dollars.

§ 3. This act shall take effect and be in force from and after its passage and publication.

## Chap. 224, L. 1899.

AN ACT defining the crime of forgery, and prohibiting the false making, alteration, forging or counterfeiting of any letter or certificate purporting to have been issued by a corporation or person to an employe, or of a card or receipt purporting to have been given by any association of railway employes, and prohibiting the uttering and publishing of any such letter, certificate, card or receipt, and prescribing the punishment therefor. (Approved April 20, 1899.)

Section 1. Any person who shall falsely make, alter, forge or counterfeit any card or receipt of dues purporting to be given or issued by any association of railway employes, or by any of its officers to its members, with intent to injure, deceive or defraud, shall be punished as hereinafter provided.

§ 2. Any person who shall falsely make, alter, forge or counterfeit any letter or certificate purporting to be given by any corporation or person, or officer or agent of such corporation or person to an employe of such corporation or person at the time of such employe's leaving the service of such corporation or person, showing the capacity or capacities in which such employe was employed by such corporation or person, the date of leaving the service or the reason or cause of such leaving, with the intent to injure, deceive or defraud, shall be punished as hereinafter provided.

§ 3. Any person who shall utter, publish, pass or tender as true, or who shall have in his possession with intent to utter, publish, pass or tender as true, any false, altered, forged or counterfeited letter, certificate, card or receipt, the forging, uttering or counterfeiting whereof is prohibited by either of the preceding sections of this act, with intent to injure, deceive or defraud, shall be punished as hereinafter provided.

§ 4. Any person violating any of the provisions of this act shall, upon conviction thereof, be punished by imprisonment in the State's prison or county jail not more than one year, or by fine not exceeding two hundred dollars.

§ 5. This act shall take effect and be in force from and after its passage and publication.

## Chap. 274, L. 1899.

AN ACT to regulate the employment of minors in the State of Wisconsin. (Approved April 27, 1899.)

Section 1. No child under fourteen years of age shall be employed at any time in any factory or workshop or in or about any mine. No such child shall be employed in any mercantile establishment, laundry or in the telegraph, telephone or public messenger service, except during the vacation of the public schools in the town, district or city where such child is employed.

§ 2. It shall be the duty of every person, firm or corporation, agent or manager of any firm or corporation employing minors in any mercantile establishment, store, office, laundry, manufacturing establishment, factory or workshop, or in the telegraph, telephone or public messenger service within this State to keep a register in said mercantile establishment, store, office, laundry, manufacturing establishment, factory or workshop, in which said minors shall be employed or permitted or suffered to work, in which register shall be recorded the name, age, date of birth, place of residence of every child employed or permitted or suffered to work therein under the age of sixteen years; and it shall be unlawful for any person, firm or corporation, agent or manager of any firm or corporation to hire or employ or to permit or suffer to work in any mercantile establishment, store, office, laundry, manufacturing establishment, factory or workshop, telegraph, telephone or public messenger service, any child under the age of sixteen years, unless there is first provided and placed on file in such mercantile establishment, store, office, laundry, manufacturing establishment, factory or workshop, an affidavit made by the parent, stating the name, date and place of birth and name and place of the school attended of such child. If such child have no parent or guardian, then such affidavit shall be made by the child, and the register and affidavits

## Employment of minors; coercion — L. 1899, chs. 274, 330.

herein provided for shall, on demand, be produced and shown for inspection to the factory inspector, assistant factory inspectors, or any officer of the bureau of labor and industrial statistics.

§ 3. No person under the age of sixteen years shall be employed, required, permitted or suffered to work for wages at any gainful occupation longer than ten hours in any one day, nor more than six days in any one week, nor after the hour of nine at night nor before the hour of six in the morning.

§ 4. It shall be the duty of the commissioner of labor, the factory or assistant factory inspectors, to enforce the provisions of this act, and to prosecute violations of the same before any court of competent jurisdiction in this State. It shall be the duty of the said commissioner of labor or the factory or assistant factory inspectors, and they are hereby authorized and empowered to visit and inspect, at all reasonable times, and as often as possible, all places covered by this act.

§ 5. The commissioner of labor, the factory or assistant factory inspectors shall have the power to demand a certificate of physical fitness, from some regularly licensed physician, in the case of children who may seem physically unable to perform the labor at which they may be employed, and no minor shall be employed who cannot obtain such a certificate.

§ 6. Whenever it appears upon due examination that the labor of any minor over twelve years of age, who would be debarred from employment under the provisions of section one of this act, is necessary for the support of the family to which said child belongs or for its own support, the county judge of the county where said child resides, the commissioner of labor or any factory or assistant factory inspector may in the exercise of their discretion issue, free of charge, a permit or excuse authorizing the employment of such minor within such time or times as they may fix.

§ 7. No firm, person or corporation shall employ or permit any child under sixteen years of age to have the care, custody, management or operation of any elevator.

§ 8. The words "manufacturing establishment," "factory," or "workshop," as used in this act, shall be construed to mean any place where goods or products are manufactured or repaired, dyed, cleaned or sorted, stored or packed, in whole or in part, for sale or for wages, and not for the personal use of the maker or his or her family or employer.

§ 9. Any person, firm or corporation, agent or manager of any corporation who, whether for himself or for such firm or corporation or by himself or through agents, servants or foremen, shall violate or fail to comply with any of the provisions of this act, or shall hinder or delay the commissioner of labor, the factory or assistant factory inspectors or any or either of them in the performance of

their duty or refuse to admit or shut or lock them out from any place required to be inspected by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars for each offense. Any corporation which, by its agents, officers or servants, shall violate or fail to comply with any of the provisions of this act, shall be liable to the above penalties, which may be recovered against such corporations in an action for debt or assumpsit brought before any court of competent jurisdiction in this State.

§ 10. Any parent or guardian, who suffers or permits a child to be employed or suffered or permitted to work in violation of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five nor more than twenty-five dollars.

§ 11. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 12. This act shall take effect and be in force from and after its passage and publication.

## Chap. 330, L. 1899.

**AN ACT** relating to the employment of labor and providing penalties for a violation of its provisions. (Approved May 3, 1899.)

Section 1. Any person or corporation engaged in manufacturing, which requires from persons in his or its employ, under penalty of forfeiture of a part of the wages earned by them, a notice of intention to leave such employ, shall be liable to the payment of a like forfeiture if he or it discharges, without similar notice, a person in such employ, except for incapacity or misconduct, unless in case of a general suspension of labor in his or its shop or factory or in the department thereof wherein such employee is engaged.

§ 2. No person shall, by threatening to discharge a person from his employment or threatening to reduce the wages of a person or by promising to give employment at higher wages to a person, attempt to influence a qualified voter to give or withhold his vote at an election.

§ 3. No license shall be granted for a theatrical exhibition or public show in which children under fifteen years of age are employed as acrobats, contortionists, or in any feats of gymnastics or equestrianism, when in the opinion of the board of officers authorized to grant license, such children are employed in such manner as to corrupt their morals or impair their physical health.

§ 4. Any person who shall violate any of the provisions of this act, shall, upon conviction, be fined in a sum not exceeding one hundred dollars.

§ 5. This act shall take effect and be in force from and after its passage and publication.

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Discrimination against labor organizations — L. 1899, ch. 332.

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**Chap. 332, L. 1899.**

**AN ACT** to prohibit discrimination against members of labor organizations. (Approved May 3, 1899.)

Section 1. No person, corporation, agent or officer on behalf of any person or corporation, shall coerce or compel any person or persons into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or

continuing in the employment of any such persons or corporation, and no person or corporation shall discharge an employe because he is a member of any labor organization.

§ 2. Any person or corporation violating any of the provisions of this act shall be fined not less than two hundred dollars and not more than one thousand dollars, or be punished by imprisonment in the county jail not to exceed nine months, or both.

§ 3. This act shall take effect and be in force from and after its passage and publication.



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**WYOMING.**

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# WYOMING.

## LAWS OF 1899.

### CHAPTER 5.

#### Protection of Trade-Marks.

### CHAPTER 52.

#### Revision of the Laws.

AN ACT to adopt and establish the Revised Statutes of Wyoming of the year 1899, and providing for the editing of the same, and repealing all laws in conflict therewith.

The above act provides for a compilation and revisions of all the statutes of Wyoming, to be published and take effect December 1, 1899, too late for consideration in this annual.

### CHAPTER 61.

#### Filing Certificates.

AN ACT providing for the filing of certificates of incorporation by corporations, and fixing a penalty for a failure to comply with the provisions of this act.

Section 1. Any corporation engaged in carrying on any kind of manufacturing, mining, chemical, merchandising or mechanical business, constructing or operating railroads, telegraph lines or other business for the purpose of profit in this State, shall within one year from the time of commencing such business, file its certificate of incorporation with the secretary of State, and the respective county clerks in the manner now provided by the laws of this State.

§ 2. Any corporation or any officer or agent thereof, or any person acting for it, attempting to do business in this State for any corporation of the character described in section one of this act, which has failed

to comply with the requirements of this act with reference to the filing of its certificates of incorporation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, or be imprisoned in the county jail for not more than six months.

### CHAPTER 69.

#### Secretary of State -- Fees.

AN ACT to amend and re-enact section 13 of chapter 95 of the Session Laws of 1890-1891, being "An act concerning the secretary of State, fixing his bond, prescribing his duties, establishing his fees and repealing existing statutory laws concerning the same."

Section 1. That section 13 of an act entitled "An act concerning the secretary of State, fixing his bond, prescribing his duties, establishing his fees, and repealing existing statutory laws concerning the same," approved January 15, 1891, be and the same is hereby amended and re-enacted so as to read as follows:

§ 13. The secretary of State shall receive the following fees which he shall collect in advance and shall pay into the general fund of the State treasury:

For certificate and seal, one dollar.

For filing each paper, one dollar.

\* \* \* \* \*

For recording each instrument of writing, for the first folio (one hundred words), one dollar; and for each subsequent folio, fifteen cents.

\* \* \* \* \*

For issuing any other paper not herein enumerated, one dollar.

## DECISIONS.

(Include 58 Pac. Rep. 192.)

### Insolvency.

In a particular case, held, that the corporation did not assume the debts of its incorporator, although he took practically all

of its stock. A conveyance by the corporation to secure the debts of the stockholder was in fraud of its creditors. *Durlacher v. Frazer*, Sup. Ct. Wyo., 55 Pac. Rep. 306 (1898).









